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PLANNING COMMISSION STAFF REPORT - DEVELOPMENT CODE AMENDMENT

HEARING DATE: April 14, 2016

FILE NO: DCA-16-001

APPLICANT: Initiated by Newberg City Council on February 1, 2016

REQUEST: Amend the Newberg Development Code for recreational marijuana wholesalers, laboratories, research certificates and retailers as permitted, conditional or prohibited uses in districts and subdistricts within the City of Newberg

ATTACHMENTS:

Resolution 2016-314 with
Exhibit "A": Proposed Development Code Text Amendment
Exhibit "B": Findings

1. City Council Resolution 2015-3253
2. Public Comment from Leif Patterson
3. 1,000 foot Schools Buffer Map
4. 1,000 foot Parks Buffer Map
5. 1,000 foot Schools/Parks Buffer Map

A. SUMMARY: The proposed Development Code amendments do the following:

- Adds Recreational Marijuana Laboratories as a permitted use in C-1, C-2, C-3, C-4, C-1/SP, C-2/LU, C-2/PD, C-2/SP, C-3/LU, SD/V, SD/NC, SD/H, M-1, M-2, M-3, M-4-I, M-4-C, SD/E, M-1/SP, II, AIO and CC.
- Adds Recreational Marijuana Research Certificates as a permitted use in C-1, C-2, C-3, C-4, C-1/SP, C-2/LU, C-2/PD, C-2/SP, C-3/LU, SD/V, SD/NC, SD/H, M-1, M-2, M-3, M-4-I, M-4-C, SD/E, M-1/SP, II, AIO and CC.
- Adds Recreational Marijuana Retailers as a permitted use in C-1, C-2, C-3, C-4, C-1/SP, C-2/LU, C-2/PD, C-2/SP, C-3/LU, SD/V, SD/NC and SD/H with footnotes for a 1,000 foot buffer from parks and schools, and operating hours limited to the hours between 9 AM and 8 PM.
- Adds Recreational Marijuana Wholesalers as a permitted use in R-1, R-2, R-3, R-4, RP, AR, R-1/PD, R-1/0.1, R-1/0.4, R-1/6.6, R-1/SP, R-2/PD, R-2/SP, SD/LDR, SD/MMR, R-3/PD, RP/SP, RP/LU and ARO with footnote of no product on premises.
- Adds Recreational Marijuana Wholesalers as a conditional use in C-2 with footnotes allowed

indoors only and 1,000 foot buffer from parks and schools.

- Adds Recreational Marijuana Wholesalers as a permitted use in M-1, M-2, M-3, M-4-I, M-1/SP, SD/E and II.

BACKGROUND: The Oregon voters passed Measure 91 on recreational marijuana in November 2014. The Oregon Legislature enacted four bills during the 2015 legislative session related to the Oregon Medical Marijuana Act and Measure 91. House Bill (HB) 3400 was the omnibus bill covering recreational marijuana and modifications to the medical marijuana program. HB 2014 was enacted addressing taxes on the sale of recreational marijuana, SB 460 related to limited retail sales of marijuana from medical marijuana dispensaries and SB 844 enacted a task force on researching the medical and public health properties of cannabis. In addition to the enacting of the four bills the Oregon Liquor Control Commission adopted temporary Oregon Administrative Rules (OAR's) on October 22, 2015 that were subsequently modified on November 20, 2015 for recreational marijuana under Chapter 845, Division 25.

On September 8, 2015 the Newberg City Council was provided background information on medical and recreational marijuana at its Work Session. At the City Council Business Session on September 8th they established the Marijuana Subcommittee (Subcommittee) comprised of Councilors Rourke, Bacon and McKinney along with non-voting member Mayor Andrews. The City Council also directed staff to bring back an ordinance with a ban of the sale of recreational marijuana from Medical Marijuana Dispensaries.

On September 21, 2015 the Newberg City Council passed Ordinance No. 2015-2787 declaring a ban on the early sale of recreational marijuana by marijuana dispensaries and declaring an emergency.

At the January 12, 2016 Marijuana Subcommittee (Subcommittee) meeting the Subcommittee passed a motion 3-0 directing staff to create a Request for Council Action (RCA) to initiate a Development Code amendment for recreational marijuana wholesale, laboratory, research certificate and retail regulations to bring forward for Council consideration on February 1. The City Council adopted Resolution No. 2015-3253 on February 1, 2016 initiating the Development Code amendment process (Attachment 1).

The Subcommittee met again on February 4, 2016 and developed recommendations on recreational marijuana wholesalers, laboratories, research certificates and retailers.

B. **PROCESS:** A development code amendment is a Type IV application and follows the procedures in Newberg Development Code 15.100.060. The Planning Commission will hold a legislative hearing on the application. The Commission will make a recommendation to the Newberg City Council. Following the Planning Commission's recommendation, the Newberg City Council will hold a legislative hearing to consider the matter. Important dates related to this application are as follows:

1. 2/1/16: The Newberg City Council initiated the Development Code amendment.

2. 3/30/16: Planning staff placed notice on Newberg's website, and posted notice in four public buildings. *The Newberg Graphic* published notice of the Planning Commission hearing.

3. 4/14/16: The Planning Commission will hold a legislative hearing to consider the application.

C. PUBLIC COMMENTS: As of the writing of this report, the city has received one comment on the application. The comment indicates recreational marijuana sales should be allowed in Newberg (Attachment 2). If the city receives additional written comments by the comment deadline, Planning staff will forward them to the Commissioners.

D. ANALYSIS:

PLACE

Oregon Revised Statutes 475B.015 provides the following definitions:

> (24)(a) "Premises" or "licensed premises" includes the following areas of a location licensed under ORS 475B.070, 475B.090, 475B.100 or 475B.110:
> (A) All public and private enclosed areas at the location that are used in the business operated at the location, including offices, kitchens, rest rooms and storerooms;
> (B) All areas outside a building that the commission has specifically licensed for the production, processing, wholesale sale or retail sale of marijuana items; and
> (C) For a location that the commission has specifically licensed for the production of marijuana outside a building, the entire lot or parcel, as defined in ORS 92.010, that the licensee owns, leases or has a right to occupy.
> (b) "Premises" or "licensed premises" does not include a primary residence.

Oregon Administrative Rule, Division 25 provides the following definitions:

GENERAL REQUIREMENTS APPLICABLE TO ALL MARIJUANA LICENSES

845-025-1015
Definitions

> (38) "Premises" or "licensed premises" includes the following areas of a location licensed under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015:
> (a) All public and private enclosed areas at the location that are used in the business operated at the location, including offices, kitchens, rest rooms and storerooms;
> (b) All areas outside a building that the Commission has specifically licensed for the production, processing, wholesale sale or retail sale of marijuana items; and

(c) For a location that the Commission has specifically licensed for the production of marijuana outside a building, the entire lot or parcel, as defined in ORS 92.010, that the licensee owns, leases or has a right to occupy.
(d) "Premises" or "licensed premises" does not include a primary residence.
(39) "Primary Residence" means real property inhabited for the majority of a calendar year by an owner, renter or tenant, including manufactured homes and vehicles used as domiciles.

HB 3400, Section 33 (ORS 475B.340) allows local governments to regulate the location of recreational marijuana wholesale and retail operations. The law reads:

(Land Use)

SECTION 33. Section 59, chapter 1, Oregon Laws 2015, is amended to read:
Sec. 59. [*(1) Cities and counties may adopt reasonable time, place and manner regulations of the nuisance aspects of establishments that sell marijuana to consumers if the city or county makes specific findings that the establishment would cause adverse effects to occur.*]
[*(2) The authority granted to cities and counties by this section is in addition to, and not in lieu*
of, the authority granted to a city or county under its charter and the statutes and Constitution of this state.]
(1) For purposes of this section, "reasonable regulations" includes:
(a) Reasonable conditions on the manner in which a marijuana producer licensed under section 19, chapter 1, Oregon Laws 2015, may produce marijuana;
(b) Reasonable conditions on the manner in which a marijuana processor licensed under section 20, chapter 1, Oregon Laws 2015, may process marijuana;
(c) Reasonable conditions on the manner in which a marijuana wholesaler licensed under section 21, chapter 1, Oregon Laws 2015, may sell marijuana at wholesale;
(d) Reasonable limitations on the hours during which a marijuana retailer licensed under section 22, chapter 1, Oregon Laws 2015, may operate;
(e) Reasonable conditions on the manner in which a marijuana retailer licensed under section 22, chapter 1, Oregon Laws 2015, may sell marijuana items;
(f) Reasonable requirements related to the public's access to a premises for which a license has been issued under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015; and
(g) Reasonable limitations on where a premises for which a license may be issued under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015, may be located.
(2) Notwithstanding ORS 633.738, the governing body of a city or county may adopt ordinances that impose reasonable regulations on the operation of businesses located at premises for which a license has been issued under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015, if the premises are located in the area subject to the jurisdiction of the city or county, except that the governing body of a city or county may not adopt an ordinance that prohibits a premises for which a license has been issued under section 22, chapter 1, Oregon Laws 2015,

from being located within a distance that is greater than 1,000 feet of another premises for which a license has been issued under section 22, chapter 1, Oregon Laws 2015.
(3) Regulations adopted under this section must be consistent with city and county comprehensive plans and zoning ordinances and applicable provisions of public health and
safety laws.

HB 3400, Section 15 (ORS 575B.100) allows local governments to regulate the location of recreational marijuana wholesale operations. The law reads:

(License Holders)

SECTION 15. Section 21, chapter 1, Oregon Laws 2015, is amended to read:
Sec. 21. (1) The wholesale sale of marijuana items is subject to regulation by the Oregon Liquor Control Commission.
(2) A marijuana wholesaler must have a wholesale license issued by the commission for the premises at which marijuana items are received, [*kept*,] stored[,] or delivered.
To hold a wholesale license under this section, a marijuana wholesaler:
(a) Must apply for a license in the manner described in section 28, chapter 1, Oregon Laws 2015;
(b) Must, until January 1, 2020, provide proof that an applicant listed on an application submitted under section 28, chapter 1, Oregon Laws 2015, has been a resident of this state for two or more years, and must provide proof that the applicant is 21 years of age or older;
(c) May not be located in an area that is zoned exclusively for residential use; and
(d) Must meet the requirements of any rule adopted by the commission under subsection (3) of this section.
(3) The commission shall adopt rules that:
(a) Require a marijuana wholesaler to annually renew a license issued under this section;
(b) Establish application, licensure and renewal of licensure fees for marijuana wholesalers;
(c) Require marijuana items received, stored or delivered by a marijuana wholesaler to be tested in accordance with section 92 of this 2015 Act; and
(d) Require a marijuana wholesaler to meet any public health and safety standards and industry best practices established by the commission by rule.
(4) Fees adopted under subsection (3)(b) of this section:
(a) May not exceed the cost of administering sections 3 to 70, chapter 1, Oregon Laws 2015, with respect to marijuana wholesalers; and
(b) Shall be deposited in the Marijuana Control and Regulation Fund established under section 32 of this 2015 Act.

HB 3400, Sections 16 and 17 (ORS 475B.110) allows local governments to regulate the location of recreational marijuana retail operations. The law reads:

> **SECTION 16.** Section 22, chapter 1, Oregon Laws 2015, is amended to read:
> **Sec. 22.** (1) The retail sale of marijuana items is subject to regulation by the Oregon Liquor Control Commission.
> (2) A marijuana retailer must have a retail license issued by the commission for the premises at which marijuana items are sold. **To hold a retail license under this section, a marijuana retailer:**
> **(a) Must apply for a license in the manner described in section 28, chapter 1, Oregon Laws 2015;**
> **(b) Must, until January 1, 2020, provide proof that an applicant listed on an application submitted under section 28, chapter 1, Oregon Laws 2015, has been a resident of this state for two or more years, and must provide proof that the applicant is 21 years of age or older;**
> **(c) May not be located in an area that is zoned exclusively for residential use;**
> **(d) May not be located within 1,000 feet of:**
> **(A) A public elementary or secondary school for which attendance is compulsory under ORS 339.020; or**
> **(B) A private or parochial elementary or secondary school, teaching children as described in ORS 339.030 (1)(a); and**
> **(e) Must meet the requirements of any rule adopted by the commission under subsection (3) of this section.**
> **(3) The commission shall adopt rules that:**
> **(a) Require a marijuana retailer to annually renew a license issued under this section;**
> **(b) Establish application, licensure and renewal of licensure fees for marijuana retailers;**
> **(c) Require marijuana items sold by a marijuana retailer to be tested in accordance with section 92 of this 2015 Act; and**
> **(d) Require a marijuana retailer to meet any public health and safety standards and industry best practices established by the commission by rule.**
> **(4) Fees adopted under subsection (3)(b) of this section:**
> **(a) May not exceed the cost of administering sections 3 to 70, chapter 1, Oregon Laws 2015, with respect to marijuana retailers; and**
> **(b) Shall be deposited in the Marijuana Control and Regulation Fund established under section 32 of this 2015 Act.**
>
> **SECTION 17. If a school described in section 22 (2)(d), chapter 1, Oregon Laws 2015, that has not previously been attended by children is established within 1,000 feet of a premises for which a license has been issued under section 22, chapter 1, Oregon Laws 2015, the marijuana retailer located at that premises may remain at that location unless the Oregon Liquor Control Commission revokes the license of the marijuana retailer under section 30, chapter 1, Oregon Laws 2015.**

HB 3400, Section 34 (ORS 475B.370 and ORS 475B.063) establishes a requirement for a land use compatibility statement for recreational marijuana wholesale and retail uses. The law reads:

> **<u>SECTION 34.</u> (1) Notwithstanding any other provision of law, marijuana is:**
> **(a) A crop for the purposes of "farm use" as defined in ORS 215.203;**
> **(b) A crop for purposes of a "farm" and "farming practice," both as defined in ORS 30.930;**
> **(c) A product of farm use as described in ORS 308A.062; and**
> **(d) The product of an agricultural activity for purposes of ORS 568.909.**
> **(2) Notwithstanding ORS chapters 195, 196, 197 and 215, the following are not permitted uses on land designated for exclusive farm use:**
> **(a) A new dwelling used in conjunction with a marijuana crop;**
> **(b) A farm stand, as described in ORS 215.213 (1)(r) or 215.283 (1)(o), used in conjunction with a marijuana crop; and**
> **(c) A commercial activity, as described in ORS 215.213 (2)(c) or 215.283 (2)(a), carried on in conjunction with a marijuana crop.**
> **(3) A county may allow the production of marijuana as a farm use on land zoned for farm or forest use in the same manner as the production of marijuana is allowed in exclusive farm use zones under this section and ORS 215.213 and 215.283.**
> **(4)(a) Prior to the issuance of a license under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015, the Oregon Liquor Control Commission shall request a land use compatibility statement from the city or county that authorizes the land use. The land use compatibility statement must demonstrate that the requested license is for a land use that is allowable as a permitted or conditional use within the given zoning designation where the land is located. The commission may not issue a license if the land use compatibility statement shows that the proposed land use is prohibited in the applicable zone.**
> **(b) A city or county that receives a request for a land use compatibility statement under this subsection must act on that request within 21 days of:**
> **(A) Receipt of the request, if the land use is allowable as an outright permitted use; or**
> **(B) Final local permit approval, if the land use is allowable as a conditional use.**
> **(c) A city or county action concerning a land use compatibility statement under this subsection is not a land use decision for purposes of ORS chapter 195, 196, 197 or 215.**

Oregon Administrative Rule, Division 25 establishes a requirement for a land use compatibility statement for recreational marijuana wholesale and retail uses. The rule reads:

845-025-1090
Application Review
(1) Once the Commission has determined that an application is complete it must review the application to determine compliance with chapter 1, Oregon Laws 2015, chapter 614, Oregon Laws 2015, and these rules.
(2) The Commission:
(a) Must, prior to acting on an application, request a land use compatibility statement from the city or county that authorizes land use in the city or county in which the applicant's proposed premises is located or request verification that a land use compatibility statement submitted by an applicant is valid and accurate
(b) May, in its discretion, prior to acting on an application:
(A) Contact any applicant or individual with a financial interest and request additional documentation or information; and
(B) Verify any information submitted by the applicant.
(3) The Commission must inspect the proposed premises prior to issuing a license.
(4) If during an inspection the Commission determines the applicant is not in compliance with these rules, the applicant will be provided with a notice of the failed inspection and the requirements that have not been met.
(a) An applicant that fails an inspection will have 15 calendar days from the date the notice was sent to submit a written response that demonstrates the deficiencies have been corrected.
(b) An applicant may request in writing one extension of the 15-day time limit in subsection (a) of this section, not to exceed 30 days.
(5) If an applicant does not submit a timely plan of correction or if the plan of correction does not correct the deficiencies in a manner that would bring the applicant into compliance, the Commission may deny the application.
(6) If the plan of correction appears, on its face, to correct the deficiencies, the Commission will schedule another inspection.
(7) If an applicant fails a second inspection, the Commission may deny the application unless the applicant shows good cause for the Commission to perform additional inspections.

Oregon Administrative Rule, Division 25 establishes requirements and limitations for denial of a license by the Oregon Liquor Control Commission for wholesale and retail recreational marijuana uses. The rule reads:

845-025-1115
Denial of Application
(1) The Commission must deny an initial or renewal application if:
(a) An applicant is under the age of 21 or, until January 1, 2020, has not been a resident or Oregon for at least two years. If the Commission determines that an applicant is a non-resident the Commission will hold that application under review until 30 days after the 2016 Oregon Legislature adjourns.
(b) The applicant's land use compatibility statement shows that the proposed land use is prohibited in the applicable zone.

(c) The proposed licensed premises is located:
(A) On federal property.
(B) At the same physical location or address as a:
(i) Medical marijuana grow site registered under ORS 475.304, unless the grow site is also licensed under section 116, chapter 614, Oregon laws 2015;
(ii) Medical marijuana processing site registered under section 85, chapter 614, Oregon Laws 2015; or
(iii) Medical marijuana dispensary registered under ORS 475.314.
(C) At the same physical location or address as a liquor licensee licensed under ORS chapter 471 or as a retail liquor agent appointed by the Commission.
(d) The proposed licensed premises of a producer applicant is:
(A) On public land; or
(B) On the same tax lot or parcel as another producer licensee under common ownership.
(e) The proposed licensed premises of a processor who has applied for an endorsement to process extracts is located in an area that is zoned exclusively for residential use.
(f) The proposed licensed premises of a retail applicant is located:
(A) Within 1,000 feet of:
(i) A public elementary or secondary school for which attendance is compulsory under ORS 339.020; or (ii) A private or parochial elementary or secondary school, teaching children as described in ORS 339.030.
(B) In an area that is zoned exclusively for residential use.
(g) The proposed licensed premises of a wholesaler applicant is in an area zoned exclusively for residential use.
(h) A city or county has prohibited the license type for which the applicant is applying, in accordance with sections 133 or 134, chapter 614, Oregon Laws 2015.
(2) The Commission may deny an initial or renewal application, unless the applicant shows good cause to overcome the denial criteria, if it has reasonable cause to believe that:
(a) The applicant:
(A) Is in the habit of using alcoholic beverages, habit-forming drugs, marijuana, or controlled substances to excess.
(B) Has made false statements to the Commission.
(C) Is incompetent or physically unable to carry on the management of the establishment proposed to be licensed.
(D) Is not of good repute and moral character.
(E) Does not have a good record of compliance with sections 3 to 70, chapter 1, Oregon Laws 2015, chapter 614, Oregon Laws 2015, or these rules, prior to or after licensure including but not limited to:
(i) The giving away of marijuana items as a prize, premium or consideration for a lottery, contest, game of chance or skill, or competition of any kind, in violation of section 49, chapter 614, Oregon Laws 2015; (ii) Providing marijuana items to an individual without checking that the individual is 21 or older;
(iii) Unlicensed transfer of marijuana items for financial consideration; or (iv) Violations of local ordinances adopted under section 33, chapter 614, Oregon Laws 2015, pending or adjudicated by the local government that adopted the ordinance.

(F) Is not possessed of or has not demonstrated financial responsibility sufficient to adequately meet the requirements of the business proposed to be licensed.
(G) Is unable to understand the laws of this state relating to marijuana or these rules, including but not limited to ORS 475.300 to 475.346 and sections 91 to 99, chapter 614, Oregon Laws 2015. Inability to understand laws and rules of this state related to marijuana may be demonstrated by violations documented by the Oregon Health Authority.
(b) Any individual listed on the application has been convicted of violating a general or local law of this state or another state, or of violating a federal law, if the conviction is substantially related to the fitness and ability of the applicant to lawfully carry out activities under the license, except as specified in Section 29(3), chapter 1, Oregon Laws 2015.
(c) Any applicant is not the legitimate owner of the business proposed to be licensed, or other persons have an ownership interest in the business have not been disclosed to the Commission.
(3) The Commission may refuse to issue a license to any license applicant or refuse to renew the license of any licensee when conditions exist in relation to any person having a financial interest in the business or in the place of business which would constitute grounds for refusing to issue a license or for revocation or suspension of a license if such person were the license applicant or licensee. However, in cases where the financial interest is held by a corporation, only the officers and directors of the corporation, any individual or combination of individuals who own a controlling financial interest in the business shall be considered persons having a financial interest within the meaning of this subsection.
(4) The Commission will not deny an application under subsections (1) (c) (B) of this rule if the applicant surrenders the registration issued by the Authority prior to being issued an OLCC license.
(5) If the Commission denies an application because an applicant submitted false or misleading information to the Commission, the Commission may prohibit the applicant from re-applying for five years.
(6) A notice of denial must be issued in accordance with ORS 183.

Oregon Administrative Rule, Division 25 establishes restrictions and requirements for wholesale and retail recreational marijuana uses. The rule reads:

845-025-1230
Licensed Premises Restrictions and Requirements
(1) A licensed premises may not be located:
(a) On federal property; or
(b) At the same physical location or address as a:
(A) Medical marijuana grow site registered under ORS 475.304, unless the grow site is also licensed under section 116, chapter 614, Oregon Laws 2015;
(B) Medical marijuana processing site registered under section 85, chapter 614, Oregon Laws 2015; or
(C) Medical marijuana dispensary registered under ORS 475.314.

(D) Liquor licensee licensed under ORS Chapter 471 or as a retail liquor agent appointed by the Commission.
(2) The licensed premises of a producer applicant may not be on:
(a) Public land; or
(b) The same tax lot or parcel as another producer licensee under common ownership.
(3) The licensed premises of a retailer may not be located:
(a) Within 1,000 feet of:
(A) A public elementary or secondary school for which attendance is compulsory under ORS 339.020; or
(B) A private or parochial elementary or secondary school, teaching children as described in ORS 339.030.
(b) In an area that is zoned exclusively for residential use.
(4) The licensed premises of a processor who has an endorsement to process extracts may not be located in an area that is zoned exclusively for residential use.
(5) The licensed premises of a processor, wholesaler, laboratory and retailer must be enclosed on all sides by permanent walls and doors.
(6) A licensee may not permit:
(a) Any minor on a licensed premises except as described in section (7) and (8) of this rule; or
(b) On-site consumption of a marijuana item, alcohol, or other intoxicant by any individual, except that an employee who has a current registry identification card issued under ORS 475.309 may consume marijuana during his or her work shift on the licensed premises as necessary for his or her medical condition, if the employee is alone, in a closed room and not visible to others outside the room. An employee who consumes a marijuana item as permitted under this subsection may not be intoxicated while on duty.
(7) Notwithstanding section (6)(a) of this rule, a minor, other than a licensee's employee, who has a legitimate business purpose for being on the licensed premises, may be on the premises for a limited period of time in order to accomplish the legitimate business purpose. For example, a minor plumber may be on the premises in order to make a repair.
(8) Notwithstanding section (6)(a) of this rule, a minor who resides on the tax lot or parcel where a marijuana producer is licensed may be present on those portions of a producer's licensed that do not contain usable marijuana or cut and drying marijuana plants.
(9) A licensee must clearly identify all limited access areas in accordance with OAR 845-025- 1245.
(10) A licensee must keep a daily log of all employees, contractors and license representatives who perform work on the licensed premises. All employees, contractors and licensee representatives must wear clothing or a badge issued by the licensee that easily identifies the individual as an employee, contractor or licensee representative.
(11) The general public is not permitted in limited access areas on a licensed premises, except for the licensed premises of a retailer and as provided by section (14) of this rule. In addition to licensee representatives, the following individuals are permitted to

be present in limited access areas on a licensed premises, subject to the requirements in section (12) of this rule:
(a) Laboratory personnel, if the laboratory is licensed by the Commission;
(b) A contractor, vendor or service provider authorized by a licensee representative to be on the licensed premises;
(c) Another licensee or that licensee's representative;
(d) Up to seven invited guests per week subject to requirements of section (12) of this rule; or
(e) Tour groups as permitted under section (14) of this rule.
(12) Prior to entering a licensed premises all visitors permitted by section (11) of this rule must be documented and issued a visitor identification badge from a licensee representative that must remain visible while on the licensed premises. A visitor badge is not required for government officials. All visitors described in subsection (11) of this rule must be accompanied by a licensee representative at all times.
(13) A licensee must maintain a log of all visitor activity. The log must contain the first and last name and date of birth of every visitor and the date they visited.
(14) A marijuana producer or research certificate holder may offer tours of the licensed premises, including limited access areas, to the general public if the licensee submits a control plan in writing and the plan is approved by the Commission.
(a) The plan must describe how conduct of the individuals on the tour will be monitored, how access to usable marijuana will be limited, and what steps the licensee will take to ensure that no minors are permitted on the licensed premises.
(b) The Commission may withdraw approval of the control plan if the Commission finds there is poor compliance with the plan. Poor compliance may be indicated by, for example, individuals on the tour not being adequately supervised, an individual on the tour obtaining a marijuana item while on the tour, a minor being part of a tour, or the tours creating a public nuisance.
(15) Nothing in this rule is intended to prevent or prohibit Commission employees or contractors, or other state or local government officials that have jurisdiction over some aspect of the licensed premises or licensee from being on the licensed premises.
(16) A licensee may not sublet any portion of a licensed premises.
(17) A licensed premises may receive marijuana items only from a marijuana producer, marijuana processor, or marijuana wholesaler for whom a premises has been licensed by the Commission.
(18) A licensed wholesaler or retailer who sells or handles food, as that term is defined in ORS 616.695, or cannabinoid edibles must also be licensed by the Oregon Department of Agriculture under ORS 616.706.

Oregon Administrative Rule, Division 25 establishes restrictions on the location of recreational marijuana retail uses. The rule reads:

845-025-2840
Retailer Premises
(1) The licensed premises of a retailer:
(a) May not be located in an area that is zoned exclusively for residential use.

(b) May not be located within 1,000 feet of:
(A) A public elementary or secondary school for which attendance is compulsory under ORS 339.020; or
(B) A private or parochial elementary or secondary school, teaching children as described in ORS 339.030.
(c) Must be enclosed on all sides by permanent walls and doors.
(2) A retailer must post in a prominent place signs at every:
(a) Point of sale that read:
(A) "No Minors Permitted Anywhere on the Premises"; and
(B) "No On-Site Consumption".
(b) Exit from the licensed premises that reads: "Marijuana or Marijuana Infused Products May Not Be Consumed In Public".
(3) A retailer must designate a consumer sales area on the licensed premises where consumers are permitted. The area shall include the portion of the premises where marijuana items are displayed for sale to the consumer and sold and may include other contiguous areas such as a lobby or a restroom. The consumer sales area is the sole area of the licensed premises where consumers are permitted.
(4) All inventory must be stored on the licensed premises.
(5) For purposes of determining the distance between a retailer and a school referenced in subsection (1)(b) of this rule, "within 1,000 feet" means a straight line measurement in a radius extending for 1,000 feet or less in any direction from the closest point anywhere on the boundary line of the real property comprising a school to the closest point of the licensed premises of a retailer. If any portion of the licensed premises is within 1,000 feet of a school as described subsection (1)(b) of this rule an applicant will not be licensed.

HB 3400 and Oregon Administrative Rule, Division 25 have no specific provisions for the location of testing laboratories and research certificate facilities. Research certificates can be issued to qualifying private and public researchers. The Planning Commission may want to consider limiting these two uses. One option is to allow testing laboratories as a permitted use in industrial districts. For research certificates an option is to allow the activity as a permitted use in industrial districts. The Planning Commission may also want to consider if research certificate activities should be allowed in the Institutional District. The rules for testing laboratories and research certificates reads as follows:

MARIJUANA TESTING LABORATORIES

845-025-5000
Laboratory License Privileges
A licensed marijuana testing laboratory may:
(1) Obtain samples of marijuana items from licensees for purposes of performing testing as provided in these rules and OAR 333-007-0300 to 333-007-0490;
(2) Transport and dispose of samples as provided in these rules; and

(3) Perform testing on marijuana items in a manner consistent with the laboratory's accreditation by the Oregon Health Authority, these rules and OAR 333-007-0300 to 333-007-0490.

845-025-5030
Laboratory Licensing Requirements
(1) General Requirements
(a) A laboratory that intends to test marijuana items for producer, processor, wholesale or retail licensees must be licensed by the Commission.
(b) An applicant for a license under this rule must comply with all applicable application requirements in OAR 845-025-1030 and pay the required application and license fees, except that a laboratory licensee is not subject to any residency requirements.
(c) A laboratory application is subject to the same application review procedures as other applicants.
(d) In addition to the denial criteria in OAR 845-025-1115, the Commission may refuse to issue a laboratory license for any violation of sections 91 to 99, chapter 614, Oregon Laws 2015, sections 3 to 70, chapter 1, Oregon Laws 2015, or these rules.
(e) Laboratory application and license fees are established in OAR 845-025-1060.
(2) Accreditation by the Oregon Health Authority
(a) In addition to the requirements listed in section (1) of this rule, an applicant for a laboratory license must be accredited by the Authority with a scope of accreditation that includes the sampling and testing analysis required in OAR 333-007-0300 to 333-007-0490 prior to exercising the licensed privileges in OAR 845-025-5000.
(b) An applicant for a license under this rule may apply for licensure prior to receiving accreditation, but the Commission will not issue a license until proof of accreditation is received. (c) The Commission may make efforts to verify or check on an applicant's accreditation status during the licensing process, but an applicant bears the burden of taking all steps needed to secure accreditation and present proof of accreditation to the Commission.
(d) In addition to the denial criteria in OAR 845-025-1115, the Commission may consider an application incomplete if the applicant does not obtain accreditation from the Authority within six months of applying for a license. The Commission shall give an applicant an opportunity to be heard if an application is declared incomplete under this section, but an applicant is not entitled to a contested case proceeding under ORS chapter 183. An applicant whose application is declared incomplete may reapply at any time.
(e) A licensed laboratory must maintain accreditation by the Authority at all times while licensed by the Commission. If a laboratory's accreditation lapses, is canceled or is suspended at any time for any reason while licensed by the Commission, the laboratory may not engage in any activities permitted under the license until accreditation is reinstated.
(f) Exercising license privileges while accreditation is suspended or canceled is a Category I violation and could result in license cancellation.

(3) Renewal.
(a) A laboratory must renew its license annually and pay the required renewal fees in accordance with OAR 845-025-1190.
(b) A laboratory renewal application may be denied for any violation of sections 91 to 99, chapter 614, Oregon Laws 2015, sections 3 to 70, chapter 1, Oregon Laws 2015, or these rules.

845-025-5045
Laboratory Tracking and Reporting
(1) A laboratory licensee is required to utilize CTS and follow all requirements established by OAR 845-025-7500 to OAR 845-025-7590.
(2) A laboratory licensee is responsible for tracking and entering the following information into CTS:
(a) Receipt of samples for testing, including:
(A) Size of the sample;
(B) Name of licensee from whom the sample was obtained;
(C) Date the sample was collected; and
(D) UID tag information associated with the harvest or process lot from which the sample was obtained.
(b) Tests performed on samples, including:
(A) Date testing was performed;
(B) What samples were tested for;
(C) Name of laboratory responsible for testing; and
(D) Results of all testing performed. (c) Disposition of any testing sample material.

845-025-5060
Laboratory Transportation and Waste Disposal
(1) A laboratory licensee must follow all rules regarding transportation of marijuana items established in OAR 845-025-7700.
(2) A laboratory licensee must follow all rules regarding disposal of samples from marijuana items established in OAR 845-025-7750.

845-025-5075
Laboratory Licensee Prohibited Conduct
(1) In addition to the prohibitions set forth in OAR 845-025-8520, a laboratory licensee may not: (a) Perform any required marijuana testing using any testing methods or equipment not permitted under the laboratory's accreditation through the Authority;
(b) Perform any required marijuana testing for any licensed marijuana producer, processor, wholesaler or retailer in which the laboratory licensee has a financial interest; or
(c) Engage in any activity that violates any provision of chapter 1, Oregon Laws 2015, chapter 614, Oregon Laws 2015, OAR 333-007-0300 through OAR 333-007-0490 or OAR 333, Division 64 as applicable or these rules.
(2) The Commission may suspend or cancel a laboratory license for any violation of sections 91 to 99, chapter 614, Oregon Laws 2015, or these rules. The licensee has a

right to a hearing under the procedures of ORS chapter 183; OAR chapter 137, division 003; and OAR chapter 845, division 003.
(2) A violation of this rule is a Category I violation and could result in license revocation.

RESEARCH CERTIFICATE

845-025-5300
Application for Marijuana Research Certificate
(1) The Commission shall issue Marijuana Research Certificates to qualifying public and private researchers who present research proposals that demonstrate:
(a) The proposed research would benefit the state's cannabis industry, medical research or public health and safety; and
(b) The proposed operation and methodology complies with all applicable laws and administrative rules governing marijuana licensees and licensee representatives.
(2) The process for applying for, receiving and renewing a certificate shall be the same as the process for applying for, receiving and renewing a marijuana license under OAR 845-025-1030 to 845-025-1115 except that an applicant for a Marijuana Research Certificate is not subject to the residency requirements in OAR 845-025-1045(2)(b).
(3) In addition to the application requirements in OAR-025-1030 the applicant must also provide: (a) A clear description of the research proposal;
(b) A description of the researchers' expertise in the scientific substance and methods of the proposed research;
(c) An explanation of the scientific merit of the research plan, including a clear statement of the overall benefit of the applicant's proposed research to Oregon's cannabis industry, medical research, or to public health and safety;
(d) Descriptions of key personnel, including clinicians, scientists, or epidemiologists and support personnel who would be involved in the research, demonstrating they are adequately trained to conduct this research;
(e) A clear statement of the applicant's access to funding and the estimated cost of the proposed research;
(f) A disclosure of any specific conflicts of interest that the researcher or other key personnel have regarding the research proposal;
(g) A description of the research methods demonstrating an unbiased approach to the proposed research; and
(h) If the applicant intends to research the use of pesticides, an experimental use permit issued by Oregon Department of Agriculture pursuant to OAR 603-057-0160.
(4) Research certificates will be granted for up to a three-year term.
(5) The Commission may request that the research certificate holder submit information and fingerprints required for a criminal background check at any time within the research certificate term.
(6) A certificate holder may, in writing, request that the Commission waive one or more of these rules. The request must include the following information:
(a) The specific rule and subsection of a rule that is requested to be waived;
(b) The reason for the waiver;

(c) A description of an alternative safeguard the licensee can put in place in lieu of the requirement that is the subject of the waiver, or why such a safeguard is not necessary; and
(d) An explanation of how and why the alternative safeguard or waiver of the rule protects public health and safety, prevents diversion of marijuana, and provides for accountability.
(7) The Commission may, in its discretion, and on a case-by-case basis, grant the waiver in whole or in part if it finds:
(a) The reason the certificate holder is requesting the waiver is because another state or local law prohibits compliance; or
(b) The certificate holder cannot comply with the particular rule, for reasons beyond the certificate holder's control or compliance with the rule is cost prohibitive; or
(c) Because of the nature of the research, the Commissions finds that compliance with a particular rule is not necessary and that even with the waiver public health and safety can be protected, there is no increased opportunity for diversion of marijuana, and the certificate holder remains accountable.
(8) The Commission must notify the certificate holder in writing whether the request has been approved. If the request is approved the notice must specifically describe any alternate safeguards that are required and, if the waiver is time limited, must state the time period the waiver is in effect.
(9) The Commission may withdraw approval of the waiver at any time upon a finding that the previously approved waiver is not protecting public health and safety or the research certificate holder has other issues with compliance. If the Commission withdraws its approval of the waiver the certificate holder will be given a reasonable period of time to come into compliance with the requirement that was waived.

845-025-5350
Marijuana Research Certificate Privileges and Prohibitions
(1) A certificate holder may receive marijuana items from a licensee or a registrant under ORS 475.300 to 475.346.
(2) A certificate holder may not sell or otherwise transfer marijuana items to any other person except when disposing of waste pursuant to OAR 845-025-7750, or transferring to another certificate holder.
(3) A certificate holder may not conduct any human subject research related to marijuana unless the certificate holder has received approval from an institutional review board that has adopted the Common Rule, 45 CFR Part 46.
(4) All administrative rules adopted by Commission for the purpose of administering and enforcing chapter 1, Oregon Laws 2015; chapter 614, Oregon Laws 2015; and any rules adopted thereunder with respect to licensees and licensee representatives apply to certificate holders except for those which are inconsistent with this rule.

The Newberg Municipal Code states the following regarding retail, wholesale and warehouse:

15.05.030 Definitions.
For the purpose of this title, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

"**Retail sales – general category**" means a category of uses under Chapter 15.303 NMC that sell or rent goods to the general public. Items are sold indoors, or, if outdoors, are limited to small items that do not require machinery to load to customers. Most items for sale are stored on or picked up from the site. Operators may be commercial or nonprofit entities.

"**Wholesale and industry sales category**" means a category of uses under Chapter 15.303 NMC that sell goods or merchandise to retailers, to industrial, commercial, institutional, or other professional business users, or to other wholesalers and related subordinated services. Items are only occasionally sold directly to the general public.

"**Warehouse, storage and distribution category**" means a category of uses under Chapter 15.303 NMC that involve the storage or movement of goods for themselves or other firms. Goods are generally delivered to other firms or the final consumer, except for some will-call pickups. It includes data centers that store and distribute electronic data. There is little on-site sales activity with the customer present.

Use Categories

15.303.421 Retail sales – General category.
A. Characteristics. General retail sales uses sell or rent goods to the general public. Items are sold indoors, or, if outdoors, are limited to small items that do not require machinery to load to customers. Most items for sale are stored on or picked up from the site. Operators may be commercial or nonprofit entities.

15.303.503 Wholesale and industry sales category.
A. Characteristics. Wholesale sales uses sell goods or merchandise to retailers, to industrial, commercial, institutional, or other professional business users, or to other wholesalers and related subordinated services. Items are only occasionally sold directly to the general public.

15.303.504 Warehouse, storage and distribution category.
A. Characteristics. Warehouse. Storage and distribution uses involve the storage, or movement of goods for themselves or other firms. Goods are generally delivered to other firms or the final consumer, except for some will-call pickups. It includes data

centers that store and distribute electronic data. There is little on-site sales activity with the customer present.

	USES	R-1	R-2	R-3	R-4	RP	C-1	C-2	C-3	C-4	M-1	M-2	M-3	M-4-I	M-4-C	CF	I	AR	AI	Notes and Special Use Standards
400	COMMERCIAL USES																			
	Retail sales - General						P (20)	P	P (15) (21)	P		P (23)								
500	INDUSTRIAL USES																			
	Wholesale and industry sales							C (31)			P (31)	P	P	P					P(33)	
	Warehouse, storage and distribution										P (32)	P	P	P					P (33)	

Key:

P: Permitted use
S: Special use – Use requires a special use permit
C: Conditional use – Requires a conditional use permit
X: Prohibited use
(#): See notes for limitations

Notes.
(15) Facility over 40,000 square feet gross floor area requires a conditional use permit.
(20) Businesses in the C-1 zone that have hours of operation between 10:00 p.m. and 7:00 a.m. require a conditional use permit.
(21) Drive-up service windows accessory to an existing business on the site with walk-in customer service, such as a drive-up bank window, are allowed only with a conditional use permit. Otherwise, drive-up service windows, except those in service on April 1, 2002, are prohibited. Changes in use will not be allowed.
(23) Limited to secondhand stores.
(31) Allowed indoors only.
(32) Allowed indoors only. Outdoor use requires a conditional use permit.
(33) Must be aviation-related. See Chapter 15.332 NMC.

TIME

HB 3400, Section 33 (ORS 475B.340) allows local governments to regulate the hours of operation (time) of marijuana retail operations. The law reads:

(Land Use)

SECTION 33. Section 59, chapter 1, Oregon Laws 2015, is amended to read:
Sec. 59. [*(1) Cities and counties may adopt reasonable time, place and manner regulations of the nuisance aspects of establishments that sell marijuana to consumers*

if the city or county makes specific findings that the establishment would cause adverse effects to occur.]
[*(2) The authority granted to cities and counties by this section is in addition to, and not in lieu of, the authority granted to a city or county under its charter and the statutes and Constitution of this state.*]
(1) For purposes of this section, "reasonable regulations" includes:
(a) Reasonable conditions on the manner in which a marijuana producer licensed under section 19, chapter 1, Oregon Laws 2015, may produce marijuana;
(b) Reasonable conditions on the manner in which a marijuana processor licensed under section 20, chapter 1, Oregon Laws 2015, may process marijuana;
(c) Reasonable conditions on the manner in which a marijuana wholesaler licensed under section 21, chapter 1, Oregon Laws 2015, may sell marijuana at wholesale;
(d) Reasonable limitations on the hours during which a marijuana retailer licensed undersection 22, chapter 1, Oregon Laws 2015, may operate;
(e) Reasonable conditions on the manner in which a marijuana retailer licensed under section 22, chapter 1, Oregon Laws 2015, may sell marijuana items;
(f) Reasonable requirements related to the public's access to a premises for which a license has been issued under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015; and
(g) Reasonable limitations on where a premises for which a license may be issued under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015, may be located.
(2) Notwithstanding ORS 633.738, the governing body of a city or county may adopt ordinances that impose reasonable regulations on the operation of businesses located at premises for which a license has been issued under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015, if the premises are located in the area subject to the jurisdiction of the city or county, except that the governing body of a city or county may not adopt an ordinance that prohibits a premises for which a license has been issued under section 22, chapter 1, Oregon Laws 2015, from being located within a distance that is greater than 1,000 feet of another premises for which a license has been issued under section 22, chapter 1, Oregon Laws 2015.
(3) Regulations adopted under this section must be consistent with city and county comprehensive plans and zoning ordinances and applicable provisions of public health and safety laws.

Oregon Administrative Rule, Division 25 establishes hours of retail sales to consumers. The rule reads:

845-025-2820
Retailer Operational Requirements
(1) A retailer may:
(a) Only receive marijuana items from a producer, wholesaler, processor or laboratory;
(b) Only sell marijuana items to a consumer from the licensed premises, unless sale is made pursuant to a bona fide order as described in OAR 845-025-2880;

(c) Only sell up to the following amounts at any one time to a consumer within one day:
(A) One ounce of usable marijuana;
(B) 16 ounces of a cannabinoid product in solid form;
(C) 72 ounces of a cannabinoid product in liquid form;
(D) Five grams of cannabinoid extracts or concentrate, whether sold alone or contained in an inhalant delivery system;
(E) Four immature marijuana plants; and
(F) Ten marijuana seeds;
(d) Refuse to sell marijuana items to a consumer; and
(e) Only sell to consumers between the hours of 7:00 a.m. and 10 p.m. local time.
(2) A retailer may not:
(a) Provide free samples of a marijuana item to a consumer;
(b) Sell or give away pressurized containers of butane or other materials that could be used in the home production of marijuana extracts;
(c) Require a consumer to purchase other products or services as a condition of purchasing a marijuana item or receiving a discount on a marijuana item;
(d) Sell a marijuana item for less than the cost of acquisition;
(e) Provide coupons or offer discounts, except that uniform volume discounts are permitted;
(f) Permit consumers to be present on the licensed premises or sell to a consumer between the hours of 10:00 p.m. and 7:00 a.m. local time the following day; or
(g) Sell any product derived from industrial hemp, as that is defined in ORS 571.300, that is intended for human consumption, ingestion, or inhalation, unless it has been tested, labeled and packaged in accordance with these rules.
(3) A retailer's pricing on marijuana items must remain consistent during each day.
(4) Prior to completing the sale of a marijuana item to a consumer, a retailer must verify that the consumer has a valid, unexpired government-issued photo identification and must verify that the consumer is 21 years of age or older by viewing the consumer's:
(a) Passport;
(b) Driver license, whether issued in this state or by any other state, as long as the license has a picture of the person;
(c) Identification card issued under ORS 807.400;
(d) United States military identification card; or
(e) Any other identification card issued by a state that bears a picture of the person, the name of the person, the person's date of birth and a physical description of the person.
(5) Marijuana items offered for sale by a retailer must be stored in such a manner that the items are only accessible to authorized representatives until such time as the final sale to the consumer is completed.
(6) For purposes of this rule, "coupon" means any coupon, ticket, certificate token or any other material that a person may use to obtain a price reduction or rebate in connection with the acquisition or purchase of a marijuana item.

There are no additional provisions in ORS or OAR's regarding hours of operation for wholesalers, laboratories or research certificates. For laboratories and research facilities if they

were permitted in industrial districts they could be considered to be similar to an industrial operation. The Development Code does not limit hours of operation for industrial type uses. For Medical Marijuana Dispensaries Council adopted operational hours of 9 AM - 8 PM.

MANNER

HB 3400, Section 33 (ORS 475B.340) allows local governments to regulate the manner of recreational marijuana wholesale and retail uses. The law reads:

(Land Use)

SECTION 33. Section 59, chapter 1, Oregon Laws 2015, is amended to read:
Sec. 59. [*(1) Cities and counties may adopt reasonable time, place and manner regulations of the nuisance aspects of establishments that sell marijuana to consumers if the city or county makes specific findings that the establishment would cause adverse effects to occur.*]
[*(2) The authority granted to cities and counties by this section is in addition to, and not in lieu of, the authority granted to a city or county under its charter and the statutes and Constitution of this state.*]
(1) For purposes of this section, "reasonable regulations" includes:
(a) Reasonable conditions on the manner in which a marijuana producer licensed under section 19, chapter 1, Oregon Laws 2015, may produce marijuana;
(b) Reasonable conditions on the manner in which a marijuana processor licensed under section 20, chapter 1, Oregon Laws 2015, may process marijuana;
(c) Reasonable conditions on the manner in which a marijuana wholesaler licensed under section 21, chapter 1, Oregon Laws 2015, may sell marijuana at wholesale;
(d) Reasonable limitations on the hours during which a marijuana retailer licensed under section 22, chapter 1, Oregon Laws 2015, may operate;
(e) Reasonable conditions on the manner in which a marijuana retailer licensed under section 22, chapter 1, Oregon Laws 2015, may sell marijuana items;
(f) Reasonable requirements related to the public's access to a premises for which a license has been issued under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015; and
(g) Reasonable limitations on where a premises for which a license may be issued under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015, may be located.
(2) Notwithstanding ORS 633.738, the governing body of a city or county may adopt ordinances that impose reasonable regulations on the operation of businesses located at premises for which a license has been issued under section 19, 20, 21 or 22, chapter 1, Oregon Laws 2015, if the premises are located in the area subject to the jurisdiction of the city or county, except that the governing body of a city or county may not adopt an ordinance that prohibits a premises for which a license has been issued under section 22, chapter 1, Oregon Laws 2015, from being located within a distance that is greater than 1,000 feet of another premises for which a license has been issued under section 22, chapter 1, Oregon

Laws 2015.
(3) Regulations adopted under this section must be consistent with city and county comprehensive plans and zoning ordinances and applicable provisions of public health and safety laws.

HB 3400, Sections 19 and 20 (ORS 475B.215 and ORS 475B.218) establishes requirements for marijuana handlers in recreational marijuana retail operations. The law reads:

(Marijuana Handlers)

<u>SECTION 19.</u> (1) An individual who performs work for or on behalf of a person who holds a license under section 22, chapter 1, Oregon Laws 2015, must have a valid permit issued by the Oregon Liquor Control Commission under section 20 of this 2015 Act if the individual participates in:
(a) The possession, securing or selling of marijuana items at the premises for which the license has been issued;
(b) The recording of the possession, securing or selling of marijuana items at the premises for which the license has been issued; or
(c) The verification of any document described in section 16, chapter 1, Oregon Laws 2015.
(2) A person who holds a license under section 22, chapter 1, Oregon Laws 2015, must verify that an individual has a valid permit issued under section 20 of this 2015 Act before allowing the individual to perform any work described in subsection (1) of this section at the premises for which the license has been issued.

<u>SECTION 20.</u> (1) The Oregon Liquor Control Commission shall issue permits to qualified applicants to perform work described in section 19 of this 2015 Act. The commission shall adopt rules establishing:
(a) The qualifications for performing work described in section 19 of this 2015 Act;
(b) The term of a permit issued under this section;
(c) Procedures for applying for and renewing a permit issued under this section; and
(d) Reasonable application, issuance and renewal fees for a permit issued under this section.
(2)(a) The commission may require an individual applying for a permit under this section to successfully complete a course, made available by or through the commission, through which the individual receives training on:
(A) Checking identification;
(B) Detecting intoxication;
(C) Handling marijuana items;
(D) The content of sections 3 to 70, chapter 1, Oregon Laws 2015, and rules adopted under sections 3 to 70, chapter 1, Oregon Laws 2015; and
(E) Any matter deemed necessary by the commission to protect the public health and safety.
(b) The commission or other provider of the course may charge a reasonable fee

for the course.
(c) The commission may not require an individual to successfully complete the course more than once, except that:
(A) As part of a final order suspending a permit issued under this section, the commission may require a permit holder to successfully complete the course as a condition of lifting the suspension; and
(B) As part of a final order revoking a permit issued under this section, the commission shall require an individual to successfully complete the course prior to applying for a new permit.
(3) The commission shall conduct a criminal records check under ORS 181.534 on an individual applying for a permit under this section.
(4) Subject to the applicable provisions of ORS chapter 183, the commission may suspend, revoke or refuse to issue or renew a permit if the individual who is applying for or who holds the permit:
(a) Is convicted of a felony, except that the commission may not consider a conviction for the manufacture or delivery of marijuana if the date of the conviction is two or more years before the date of the application or renewal;
(b) Violates any provision of sections 3 to 70, chapter 1, Oregon Laws 2015, or any rule adopted under sections 3 to 70, chapter 1, Oregon Laws 2015; or
(c) Makes a false statement to the commission.
(5) A permit issued under this section is a personal privilege and permits work described under section 19 of this 2015 Act only for the individual who holds the permit.

Oregon Administrative Rule, Division 25 establishes requirements for handlers in recreational marijuana retail operations. The rule reads:

MARIJUANA HANDLER PERMITS

845-025-5500
Marijuana Handler Permit and Retailer Requirements
(1) A marijuana handler permit is required for any individual who performs work for or on behalf of a marijuana retailer if the individual participates in:
(a) The possession, securing or selling of marijuana items at the premises for which the license has been issued;
(b) The recording of the possession, securing or selling of marijuana items at the premises for which the license has been issued;
(c) The verification of any document described in section 16, chapter 1, Oregon Laws 2015; or
(d) The direct supervision of a person described in subsections (a) to (c) of this section.
(2) An individual who is required by section (1) of this rule to hold a marijuana handler permit must carry that permit on his or her person at all times when performing work on behalf of a marijuana retailer.
(3) A person who holds a marijuana handler permit must notify the Commission in writing within 10 days of any conviction for a misdemeanor or felony. (4) A marijuana

retailer must verify that an individual has a valid marijuana handler permit issued in accordance with OAR 845-025-5500 to 845-025-5590 before allowing the individual to perform any work at the licensed premises.

845-025-5520
Marijuana Handler Applications
(1) In order to obtain a marijuana handler permit an individual must submit an application on a form prescribed by the Commission. The application must contain the applicant's:
(a) Name;
(b) Mailing address;
(c) Date of birth;
(d) Signature; and
(e) Response to conviction history questions.
(2) In addition to the application an applicant must submit:
(a) A copy of a driver's license or identification card issued by one of the fifty states in the United States of America or a passport; (b) The applicable fee as specified in OAR 845-025-1060; and
(c) Proof of having completed a marijuana handler education course and passed the examination. (3) If an application does not contain all the information requested or if the information and fee required in section (2) of this rule is not provided to the Commission, the application will be returned to the individual as incomplete, along with the fee.
(4) If an application is returned as incomplete, the individual may reapply at any time.

845-025-5540
Marijuana Handler Permit Denial Criteria
(1) The Commission must deny an initial or renewal application if the applicant:
(a) Is not 21 years of age or older; or
(b) Has not completed the marijuana handler education course and passed the examination.
(2) The Commission may deny a marijuana handler permit application, unless the applicant shows good cause to overcome the denial criteria, if the applicant:
(a) Has been convicted of a felony, except for a felony described in section 20(4)(a), chapter 614, Oregon Laws 2015;
(b) Has violated a provision of sections 3 to 70, chapter 1, Oregon Laws 2015, or these rules; or (c) Makes a false statement to the Commission.
(3) If the Commission denies an application under subsection (2)(b) or (c) of this rule the individual may not reapply within two years of the date the Commission received the application. (4) A Notice of Denial must be issued by the Commission in accordance with ORS 183. Stat.

845-025-5560
Marijuana Handler Course Education and Examination Requirements

(1) An individual must, prior to applying for a marijuana handler permit, complete an approved marijuana handler education course, pass the required examination, and pay the fee specified in OAR 845-025-1060.
(2) An individual must score at least 70 percent on the marijuana handler course examination in order to pass.
(a) An individual who does not pass the examination may retake the examination up to two times within 90 days of the date the individual took the course. If the individual fails to pass both retake examinations the individual must retake the handler education course.
(3) An individual must take a marijuana handler education course at least every five years prior to applying for renewal of a marijuana handler permit.
(4) The Commission may require additional education or training for permit holders at any time, with adequate notice to permit holders.

845-025-5580
Marijuana Handler Renewal Requirements
(1) An individual must renew his or her marijuana handler permit every five years by submitting a renewal application, on a form prescribed by the Commission and the applicable fee specified in OAR 845-025-1060.
(2) Renewal applications will be reviewed in accordance with OAR 845-025-5520 and 845-025-5540.

845-025-5590
Suspension or Revocation
(1) The Commission may suspend or cancel the permit of any marijuana handler if the handler:
(a) Has been convicted of a felony, except for a felony described in section 20, chapter 614, Oregon Laws 2015(4)(a);
(b) Has violated a provision of sections 3 to 70, chapter 1, Oregon Laws 2015, or these rules; or (c) Makes a material false statement to the Commission.
(2) If an individual's permit is canceled under sections (1)(b) or (c) of this rule the individual may not reapply within two years from the date a final order of revocation is issued.
(3) A notice of suspension or revocation must be issued by the Commission in accordance with ORS 183.

There are a variety of other operational requirements for recreational marijuana retail operations. These include Bonds and Liability Insurance (HB 3400, Sections 21 and 22); Tracking system for sales (HB 3400, Section 23 and OAR 845-025-7500 thru 845-025-7590); Identification requirements (HB 3400, Section 24); Protect Individuals Under the Age of 21 (HB 3400, Sections 25 - 28); Testing of Marijuana Products (HB 3400, Sections 91- 99 and OAR 845-025-5700 thru 845-025-5740); Labeling and Packaging (HB 3400, Sections 100 – 112 and 845-025-7000 thru 845-025- 760); Delivery (OAR 845-025-7700); Advertising (OAR 845-025-8000 thru 845-025-8080); Security and Alarm System (OAR 845-025-1400 thru 845-025-1460); Prizes and Giveaways (HB 3400, Section 49).

E. MARIJUANA SUBCOMMITTEE RECOMMENDATION: The Subcommittee developed the following recommendations.

Retail

1. Not allow retail as a permitted use in residential districts R-1, R-2, R-3, R- 4, AR, RP, and all residential sub-districts.
2. Allow retail as a permitted use in all commercial zones except Civic Corridor with a footnote regarding the 1,000 foot buffer from schools and parks as noted on the third map in the packet.
3. Not allow retail in industrial districts and sub-districts.
4. Not allow wholesale or retail in community facilities and institutional.
5. Change the hours of operation for retail to 9 am to 8 pm.

Wholesale

1. Allow wholesale as a permitted use in all residential categories including the sub-districts with no product allowed on the premises.
2. Allow wholesale as a conditional use in C-2 only with a footnote regarding indoor use only and new footnote regarding the 1,000 foot buffer from schools and parks.
3. Not allow wholesale or retail in community facilities and institutional.
4. Allow wholesale as a permitted use in all industrial districts and sub-districts, except Airport Industrial, with a footnote regarding the 1,000 foot buffer from schools and parks.
5. Not allow retail or wholesale in the other sub-districts.

Laboratories and Research Certificates

1. Allow laboratories and research in all commercial districts and sub-districts, institutional districts, and all industrial districts and sub-districts, except AI. They are not allowed in all other districts, such as residential, community facilities, and other.

F. PRELIMINARY STAFF RECOMMENDATION: The preliminary staff recommendation is made in the absence of public hearing testimony, and may be modified subsequent to the close of the public hearing.

The Planning Commission may want to consider if recreational marijuana wholesalers should be allowed as a permitted use with no product on site in the residential districts and residential subdistricts. The Oregon Liquor Control Commission definition of a premises and understanding that licenses will not be issued where a primary residence is located should be considered. A license may be issued in a residential area by the Oregon Liquor Control Commission if the wholesale activity was occurring in an accessory structure and all other Oregon Liquor Control Commission requirements are met.

Attachments 3 through 5 are maps depicting the 1,000 foot buffers from schools and parks recommended by the Subcommittee.

At this writing, staff recommends the following motion:

Move to adopt Planning Commission Resolution 2016-314, which recommends that the City Council adopt the requested amendments.

PLANNING COMMISSION RESOLUTION 2016-314

A RESOLUTION RECOMMENDING THAT THE CITY COUNCIL AMEND THE NEWBERG DEVELOPMENT CODE REGARDING RECREATIONAL MARIJUANA WHOLESALERS, LABORATORIES, RESEARCH CERTIFICATES AND RETAILERS

RECITALS

1. In November 2014 voters in Oregon approved Ballot Measure 91 related to recreational marijuana.

2. House Bill (HB) 3400 was passed in the 2015 Oregon Legislative session related to recreational marijuana and is now part of Oregon Revised Statutes Chapter 475B – Cannabis Regulation.

3. The Oregon Liquor Control Commission adopted temporary Oregon Administrative Rules (OAR's) on October 22, 2015 that were subsequently modified on November 20, 2015 for recreational marijuana under Chapter 845, Division 25.

4. The Newberg City Council established the Marijuana Subcommittee on September 8, 2015 to review and provide recommendations on local place, time and manner regulations for recreational marijuana.

5. The Newberg City Council initiated a potential amendment to Newberg's Development Code regarding recreational marijuana wholesalers, laboratories, research certificates and retailers on February 1, 2016 by Resolution No. 2015-3253.

6. The Marijuana Subcommittee met on February 4, 2016 and developed recommendations to the Planning Commission on recreational marijuana wholesalers, laboratories, research certificates and retailers.

7. After proper notice, the Newberg Planning Commission held a hearing on April 14, 2016 to consider the amendment. The Commission considered testimony and deliberated.

The Newberg Planning Commission resolves as follows:

1. The Commission finds that adding regulations for recreational marijuana wholesalers, laboratories, research certificates and retailers, and adding definitions for recreational marijuana wholesalers, laboratories and retailers, would be in the best interests of the city and recommends that the City Council adopt the amendments to the Newberg Development Code as shown in Exhibit "A". Exhibit "A" is hereby adopted and by this reference incorporated.

2. The findings shown in Exhibit "B" are hereby adopted. Exhibit "B" is by this reference incorporated.

Adopted by the Newberg Planning Commission this 14th day of April, 2016.

ATTEST:

Planning Commission Chair

Planning Commission Secretary

List of Exhibits:

Exhibit "A": Development Code Text Amendments

Exhibit "B": Findings

Exhibit "A" to Planning Commission Resolution 2016-314
Development Code Amendments –File DCA-16-001
Recreational Marijuana Wholesalers, Laboratories, Research Certificates and Retailers

Section 1. The Newberg Development Code 15.05.030 shall be amended to read as follows:

Note: Existing text is shown in regular font.
Added text is shown in <u>double-underline</u>
Deleted text is shown in ~~strikethrough~~.

15.05.030 Definitions

For the purpose of this title, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

<u>"Marijuana Laboratory" means a laboratory certified by the Oregon Health Authority under ORS 438.605 to 438.620 and authorized to test marijuana items for purposes specified in these rules.</u>

<u>"Marijuana Retailer" means a marijuana retailer licensed by the Oregon Liquor Control Commission.</u>

<u>"Marijuana Wholesaler" means a marijuana wholesaler licensed by the Oregon Liquor Control Commission.</u>

Section 2. Newberg Development Code, Zoning Use Table, Section 15.305.020 shall be amended to read as follows:

See Exhibit A, Attachment 1

Section 3. Newberg Development Code, Zoning Use Table, Section 15.305.030 shall be amended to read as follows:

See Exhibit A, Attachment 2

Section 4. Newberg Development Code, Stream Corridor Overlay Subdistrict, Section 15.342.110 is amended to read as follows:

15.342.110 Prohibited uses and activities.

The following activities or uses are prohibited within this subdistrict:

A. Except as provided in NMC 15.342.040(R), the planting or propagation of any plant identified as a nuisance plant as determined by a qualified botanist or indicated as a nuisance plant on the Newberg plant list.

B. The removal of native trees that are greater than six inches in diameter at breast height, except as is otherwise permitted within this chapter.

C. Any use dealing with hazardous substances or materials, including but not limited to gas service stations.

D. Public pathways, except those in conjunction with public lands, public parks or public easements that have been acquired by other than eminent domain. [Ord. 2451, 12-2-96. Code 2001 § 151.475.]

E. Recreational Marijuana Producer and Recreational Marijuana Processor.

F. Recreational Marijuana Wholesalers, Laboratories, Research Certificates and Retailers.

Section 5. Newberg Development Code, Civic Corridor Overlay Subdistrict, Section 15.350.030 is amended to read as follows:

15.350.030 Permitted buildings and uses.
All **uses** permitted in the underlying primary district are permitted within the CC subdistrict except as follows:

A. In addition to the **buildings** and **uses** permitted conditionally in NMC 15.305.020, the **planning commission** may grant a **conditional use permit** for any of the following **buildings** and **uses** in accordance with a Type III procedure:

1. Facilities which exist for the purpose of providing for the temporary care and/or lodging of adult indigent **persons**.

2. **Hospitals**.

B. The following **uses** are prohibited within the CC subdistrict:

1. **Automobile sales**, new and used.

2. Car washes, coin-operated or mechanical.

3. Garages, repair.

4. Service stations. [Amended during 11/13 supplement; Ord. 2561, 4-1-02. Code 2001 § 151.526.3.]

5. Recreational Marijuana Producer and Recreational Marijuana Processor.

6. Recreational Marijuana Wholesalers and Retailers.

Section 6. Newberg Development Code, Bypass Interchange Overlay, Section 15.356.050 is amended to read as follows:

15.356.050 Prohibited uses.

A. Several commercial types of **uses** are permitted outright or with conditional **use** approval in Newberg's industrial districts (M-1, M-2, and M-3). The area within the Newberg UGB near the Oregon 219 Interchange is generally planned for industrial **use**. To protect the interchange area from commercial development, the following **uses** are prohibited within the M-1, M-2, and M-3 districts within the boundaries of the bypass interchange overlay:

1. **Automobile sales**, new and used.

2. Billboards.

3. Car washes.

4. Convenience grocery stores.

5. **Restaurants** larger than 2,000 square feet or with drive-up service windows.

6. Service stations.

7. Drive-in theaters.

8. Auction sales.

9. Bakeries, retail.

10. **Building** material sales.

11. Driving ranges.

12. Feed and seed stores.

13. Miniature **golf courses**.

14. Skating rinks.

15. Recreational Marijuana Producer and Recreational Marijuana Processor.

16. Recreational Marijuana Wholesalers, Laboratories, Research Certificates and Retailers.

B. The industrial commercial subdistrict of the M-4 district shall not be applied within the boundaries of the BI overlay. [Ord. 2734 § 1 (Exh. B), 3-7-11; Ord. 2708 § 2, 12-1-08; Ord. 2602, 9-20-04. Code 2001 § 151.531.4.]

Section 7. Newberg Development Code, Interim Industrial Overlay, Section 15.358.030 is amended to read as follows:

15.358.030 Permitted uses.
All **uses** of land and water that are permitted in the underlying zoning district(s) are also permitted in the interim industrial overlay, with the exception of those **uses** listed in NMC 15.358.050. In addition, the following are permitted:

A. Contractor's equipment or storage.

B. Construction material storage. [Ord. 2720 § 1(5), 11-2-09. Code 2001 § 151.532.2.]

C. Recreational Marijuana Producer (indoor).

D. Recreational Marijuana Wholesalers, Laboratories, Research Certificates.

Section 8. Newberg Development Code, Interim Industrial Overlay, Section 15.358.050 is amended to read as follows:

15.358.050 Prohibited uses.
The following **uses** are prohibited in the interim industrial overlay:

A. **Cemeteries**.

B. Garbage dumps, sanitary landfills.

C. **Parks**.

D. Permanent **buildings**.

E. **Wrecking yards** for motor vehicles, **building** materials, and other similar items. [Ord. 2720 § 1(5), 11-2-09. Code 2001 § 151.532.4.]

F. Recreational Marijuana Processor.

G. Recreational Marijuana Retailers.

Exhibit "B" to Planning Commission Resolution 2016-314

Findings –File DCA-16-001
Recreational Marijuana Wholesalers, Laboratories, Research Certificates and Retailers

I. Statewide Planning Goals - relevant goals

Goal 1, Citizen Involvement, requires the provision of opportunities for citizens to be involved in all phases of the planning process.

Finding: The City Council initiated the potential development code amendment at a public meeting on February 1, 2016. The Marijuana Subcommittee meet on February 4, 2016 at a public meeting to review potential place, time and manner regulations for Recreational Marijuana Wholesalers, Laboratories, Research Certificates and Retailers. The Planning Commission, after proper notice, held a public hearing on April 14, 2016. The City Council will consider the recommendation of the Planning Commission at a future public hearing date, and decide whether or not to adopt the development code amendment. The development code amendment process provides opportunity for public comments throughout the planning process.

Goal 2, Land Use Planning, requires the development of a process and policy framework that acts as a basis for all land use decisions.

Finding: The Recreational Marijuana Wholesalers, Laboratories, Research Certificates and Retailers proposal is supportive of this goal because it was developed following city procedures for legislative action.

II. Newberg Comprehensive Plan - relevant policies

A. CITIZEN INVOLVEMENT GOAL: To maintain a Citizen Involvement Program that offers citizens the opportunity for involvement in all phases of the planning process.

Finding: The City Council initiated the potential development code amendment at a public meeting on February 1, 2016. The Marijuana Subcommittee meet on February 4, 2016 at a public meeting to review potential place, time and manner regulations for Recreational Wholesalers, Laboratories, Research Certificates and Retailers. The Planning Commission, after proper notice, held a public hearing on April 14, 2016. The City Council will consider the recommendation of the Planning Commission at a future public hearing date, and decide whether or not to adopt the development code amendment. The development code amendment process provides opportunity for public comments throughout the planning process.

B. LAND USE PLANNING GOAL: To maintain an on-going land use planning program to implement statewide and local goals. The program shall be consistent with natural and cultural resources and needs.

Finding: The Recreational Marijuana Wholesalers, Laboratories, Research Certificates and Retailers proposal is supportive of this goal because it was developed following city procedures for legislative action.

H. THE ECONOMY GOAL: To develop a diverse and stable economic base.
1. General Policies
c. The City will encourage the creation of a diversified employment base, the strengthening of trade centers and the attraction of both capital and labor intensive enterprises.
g. The City shall encourage business and industry to locate within the Newberg City limits.

Finding: The city encourages new businesses to develop within the city. A Recreational Marijuana Wholesale, Laboratory, Research Certificate and Retail operations are a legal operation under State law. Allowing Recreational Marijuana Wholesale, Laboratory, Research Certificate and Retail operations as a permitted or conditional use as represented in Exhibit A, Attachments 1 and 2 is consistent with this Comprehensive Plan goal.

III. **Conclusion:** The proposed development code amendments meet the applicable requirements of the Statewide Planning Goals, and the Newberg Comprehensive Plan, and should be approved.

Exhibit A, Attachment 1

Chapter
15.305
ZONING
USE

15.305.020 Zoning use table - Use Districts.

Newberg Development Code – Zoning Use Table

#	Use	R-1	R-2	R-3	R-4	RP	C-1	C-2	C-3	C-4	M-1	M-2	M-3	M-4-I	M-4-C	CF	I	AR	AI	Notes and Special UseStandards
100	AGRICULTURALUSES																			
Def.	Horticulture	P	P	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	
Def.	Livestock and poultry farming	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Def.	Home gardening	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Def.	Home livestock and poultry raising	S	S															S		NMC Title 6
200	RESIDENTIAL USES																			
Def.	Dwelling, single-family detached	P(2)	P	P(3)		P		C(4)	C(5)								P	P(6)		Subject to density limits of NMC15.405.010(B)
Def.	Dwelling, single-family attached	S(2)	S	S(3)		S		C(4)	C(5)								P	P(6)		NMC15.415.050; subject to density limits of NMC15.405.010(B)
Def.	**Manufactured home**on individual **lot**	S(2)	S	S(3)	P(7)	S												P(6)		NMC15.445.050 –15.445.070; subject to density limits of NMC15.405.010(B)
Def.	Manufactured dwelling park		S	S	S															NMC15.445.075 –15.445.160
Def.	Mobile home park		S	S	S															NMC15.445.075 –15.445.160
Def.	Manufactured home subdivision		S		S															NMC15.445.075 –15.445.160
Def.	Dwelling, two-family (duplex)	P(2)	P	P	C	P		C(4)	P(8)/C(5)								P			Subject to density limits of NMC15.405.010(B)
Def.	Dwelling, multifamily	C	P	P	C	P		C(4)	P(8)/C(5)								P			Subject to density limits of NMC15.405.010(B)
Def.	Dwelling, accessory	C	S	S		S											S			Chapter15.445 NMC, Article V
Def.	Dwelling, mixed use						P(9)	P(10)	P(8)/C(5)	P(11)	C	C								
Def.	Dwelling, caretaker										P	P	P	C					P(12)	Limited to one per **lot**, and allowed whenever the**use** requires the on-site residence of such **person**.
Def.	Dormitory		C	P		P											P			
Def.	Home occupation(no more than one outside paid employee)	S	S	S(13)	S	S	S(13)	S(13)	S(13)	S(13)	S(13)	S(13)	S(13)	S(13)	S(13)	S(13)	S	S	S(13)	NMC15.415.060
Def.	Home occupation(more than one outside paid employee)	C	C	C(13)	C	C	C(13)	C(13)	C(13)	C(13)	C(13)	C(13)	C(13)	C(13)	C(13)	C(13)	C	C	C(13)	NMC15.415.060
300	INSTITUTIONAL AND PUBLIC USES																			
310	**INSTITUTIONAL CARE AND HOUSING**																			
Def.	Family child care home	P	P	P(13)	P(13)	P	P(13)	P(13)	P(13)	P(13)							P	P(13)		Chapter 657AORS
312	Day care	P	P	P	C	P	P	P	P		C	C	C	C	P		P		P(14)	Chapter 657AORS
Def.	Residential care home (5 or fewer people)	P	P	P(13)	P(13)	P	P(13)	P(13)	P(13)	P(13)							P	P(13)		ORS 197.665
Def.	Residential care facility (6 – 15 people)	C	P	P	C	P		C	C								P			ORS 197.665
315	Group care facility(16+ people)	C	C	C		C		C									P			
316	Hospital	C	C	C		C		P	P								P			
Def.	Prison										C	C	C	C						
320	**ASSEMBLY**																			
321	Religious institution, place of worship	P	P	P	P	P	P	P	P	P		P(29)				C	P			
322	Private club, lodge, meeting hall			C	C			P	P	C							P			
330	**SCHOOLS**																			

330	School, primary or secondary	P	P	P		P										C				
331	College	P	P	P		P	P	P	P(15)							C	P			
332	Commercial educational services	C	C	C		C	P	P	P								C			
340	**PARKS AND OPEN SPACEs**																			
341	Open space	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
342	Park	P	P	P	P	P	P	P	P	P				P(16)		P(17)	P			
Def.	Golf course	P	P	P												P(17)				
350	**PUBLIC SERVICES**																			
351	Community services	C	C	C	C	P		P	P	P						C	P			
352	Emergency services	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Def.	Pound, dog or cat							C	C		C	P	P	C	C					
Def.	Cemetery	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	Chapter 97.46ORS
360	**TRANSPORTATION**																			
Def.	Transportation facilities and improvements	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Def.	Transit center							P	P	P	P	P	P							
Def.	Parking facility			P		C	C	P	P(18)	C	P	P	P		P		P			
Def.	**Airport, landing field**											C	C						P	
Def.	**Heliport, helipad**	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	P	
Def.	Marina									C										
	Pilings, piers, docks, and similar in-waterstructures									C										
370	UTILITIES																			
Def.	Basic utilities	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Def.	Utility distribution plant or yard											P	P	P						
Def.	Wastewater treatment plant											C	P	C						
Def.	Telecommunication facility incorporated into existing structure/utility pole and no taller than 18 feet above existing structure/utility pole	C	C	C	C	C	S	S	S	S	S	S	S	S	S		S			Chapter15.445 NMC, Article IV
Def.	**Telecommunication facility**, including**radio** towers and transmitters, which are 100 feet or less in height, except those incorporated into an existing**structure** no taller than 18 feet above that **structure**.						C	C	C		C	S(19)	S(19)	P	C		C			Chapter15.445 NMC, Article IV
Def.	**Telecommunication facility**, including**radio** towers and transmitters, which are over 100 feet						C	C	C		C	C	C	C	C		C			Chapter15.445 NMC, Article IV
400	COMMERCIAL USES																			
410	**COMMERCIAL OFFICES**																			
411	Medical office			C		P	P(20)	P	P(21)								P			
412	Local business office					P(22)	P(20)	P	P(21)											
420	**COMMERCIAL SALES AND RENTALS**																			
421	Retail sales – General						P(20)	P	P(15) (21)	P		P(23)								
422	Retail sales – Bulk outdoor							P	C			P								
423	Retail sales – Convenience						P(20)	P	P(21)	P		P(24)			P(25)					
Def.	Temporary merchant							S	S(21)											NMC5.15.050 et seq.
	Medical marijuana dispensary							P(35)	P(35)											
425	Retail food and beverage production							S	S											Chapter15.445 NMC, Article VIII
430	**EATING AND DRINKING ESTABLISHMENTS**																			
430	Eating and drinking – Alcohol-related							P	P(21)	P										Requires liquor license
430	Eating and drinking – Non-alcohol-related						P(20)	P	P(21)	P	P	P							C(26)	
440	COMMERCIAL SERVICES																			
441	Personal services					P	P(20)	P	P(21)	P										
442	Commercial services						P(20)	P	P(21)											
443	Commercial vehicle service							P	C		P(27)	P			P(28)					
Def.	Kennel, commercial							C	C		C	P	P	C	C					
450	**COMMERCIAL RECREATION**																			

451	Commercial recreation – Indoors							P	P(15)		P(29)	P(29)								
452	Commercial recreation – Outdoors							P				C								
453	Commercial recreation – Motor-vehicle-related											C							C(33)	
460	**COMMERCIAL LODGING**																			
Def.	Vacation rental home	C	C	S	S	S	S(13)	S(13)	S(13)	S(13)										Chapter15.445 NMC, Article VII
Def.	Bed and breakfast(2 or fewer rooms)	C	S	S		S	S	S	S	S										NMC15.445.010
Def.	Bed and breakfast(3 or more rooms)	C	C	C		C	C	S	S	S										NMC15.445.010
Def.	**Hotel** or **motel**							P	P(15)	P									C(26)	
Def.	Recreational vehicle park							C		C	C	C	C							NMC15.445.170
500	INDUSTRIAL USES																			
501	Traded sector industry office					P(30)	P(30)	P	P		P	P		P					P(33)	
502	Industrial services							C				P	P	P					P(33)	
503	Wholesale and industry sales							C(31)			P(31)	P	P	P					P(33)	
504	Warehouse, storage, and distribution										P(32)	P	P	P					P(33)	
505	Self-service storage							P			P	P	P	P						
506	Light manufacturing										P	P	P	P					P(33)	
507	Heavy manufacturing											P(34)	P	C						
508	Waste-related												C	C						
600	MISCELLANEOUS USES																			
Def.	**Accessory building**and **use** incidental to other permitted **uses**in the zone	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
	Uses similar to permitted **uses** in the zone and not defined or categorized	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
	Uses similar to conditional **uses** in the zone and not defined or categorized	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	
	Medical Marijuana Processor										P	P	P	P						
	Medical Marijuana Grow Site	P(36)	P(36)	P(36)	C	C	C	C	C	C	C	C	C	C	C	C	C	C		
	Recreational Marijuana Processor	X	X	X	X	X	X	C(38)	X	X	P(37)	P(37)	P(37)	P(37)	X	X	X	X	X	
	Recreational Marijuana Producer (Indoor)	X	X	X	X	X	X	X	X	X	P	P	P	P	X	X	X	X	X	
	Recreational Marijuana Producer (Outdoor)	X	X	X	X	X	X	X	X	X	C	C	C	C	X	X	X	X	X	
	Recreational Marijuana Retailer	**X**	**X**	**X**	**X**	**X**	**P(38)/(40)**	**P(38)/(40)**	**P(38)/(40)**	**P(38)/(40)**	**X**	**X**	**X**	**X**	**X**	**X**	**X**	**X**	**X**	
	Recreational Marijuana Wholesaler	**P(39)**	**P(39)**	**P(39)**	**P(39)**	**P(39)**	**X**	**C(31)/(38)**	**X**	**X**	**P(38)**	**P(38)**	**P(38)**	**P(38)**	**X**	**X**	**X**	**P(38)**	**X**	
	Recreational Marijuana Laboratories	**X**	**X**	**X**	**X**	**X**	**P**	**P**	**P**	**P**	**P**	**P**	**P**	**P**	**P**	**X**	**P**	**X**	**X**	
	Recreational Marijuana Research Certificate	**X**	**X**	**X**	**X**	**X**	**P**	**P**	**P**	**P**	**P**	**P**	**P**	**P**	**P**	**X**	**P**	**X**	**X**	

Key:

P: Permitted use

S: Special **use** – **Use** requires a special **use permit**

C: Conditional **use** – Requires a **conditional use permit**

X: Prohibited use

(#): See notes for limitations

Notes.

(1) Limited to sites with preexisting agricultural uses, including at time of annexation.

(2) Limited to one per **lot** as a permitted **use**. More than one per **lot** allowed only through a **conditional use permit** or planned unit development, subject to density limits of NMC 15.405.010(B).

(3) Permitted on individual **lots** created prior to November 17, 1992. Homes on individual **lots** created on or after November 17, 1992, will only be permitted through the planned unit development process.

(4) The permitted density shall be stated on the conditional use permit.

(5) The **dwelling units** must front onto Hancock or Second **Street**. No more than 30 percent of a single **street** frontage of a **block** may be occupied by residential **uses**. Contiguous residential **street** frontage must be less than 60 lineal feet. Density and parking standards for allowable **dwelling units** must be met.

(6) One residence per **lot** with the addition of a tie-down or **hangar** for an airplane. At a minimum, a paved tie-down or **hangar** shall be provided on the property, or the property shall include permanent rights to a private **hangar** within the **subdivision**. See Chapter 15.336 NMC.

(7) The homes are not subject to the development standards set forth in NMC 15.445.050 through 15.445.070.

(8) The units must be located on the same **lots** as another **use** permitted or conditionally permitted in the C-3 zone and may not occupy the first floor storefront area (the portion of the **building** closest to the primary **street**). There shall be no density limitation. **Private parking areas** or garages are not required for **dwelling units** located within **buildings** in existence prior to and including June 30, 1999. Parking shall be provided for all new **dwelling units** within any **building** constructed after June 30, 1999, in **private parking areas** or garages on the basis of one **parking space** for each **dwelling unit**.

(9) Permitted on the ground floor, one per **lot** in conjunction with any other **use** permitted or conditional **use** in the C-1 zone. On upper floors, **dwelling units** are unlimited and one **parking space** per **dwelling unit** is required.

(10) Permitted above any permitted **use** in the C-2 zone. There shall be no density limitation. Parking shall be provided in **private parking areas** or garages on the basis of one **parking space** for each **dwelling unit**.
(11) Must be located above ground floor commercial uses.
(12) One residence of area not more than 40 percent of the area of the **hangar** floor, up to a maximum of 1,500 square feet, for an **airport** caretaker or security officer on each separate **parcel**.
(13) Permitted in existing **dwelling units** only. New **dwelling units** may not be created for this **use** unless the **dwelling unit** would otherwise be allowed.
(14) Allowed exclusively for employers or employees of businesses located within this district.
(15) Facility over 40,000 square feet **gross floor area** requires a **conditional use permit**.
(16) Allowed in areas designated in industrial area plans.
(17) Limited to facilities owned or operated by a public agency.
(18) Parking garages are a conditional **use**, and must have first floor **street** frontage of 40 feet or less for ingress or egress. First floor development must be commercial.
(19) A **conditional use permit** is required if the facility is less than 2,000 feet from the nearest **telecommunication facility**.
(20) Businesses in the C-1 zone that have hours of operation between 10:00 p.m. and 7:00 a.m. require a conditional use permit.
(21) Drive-up service windows accessory to an existing business on the site with walk-in customer service, such as a drive-up bank window, are allowed only with a **conditional use permit**. Otherwise, drive-up service windows, except those in service on April 1, 2002, are prohibited. Changes in **use** will not be allowed.
(22) Retail sales of goods on site not allowed.
(23) Limited to secondhand stores.
(24) Store size is limited to 2,000 square feet gross floor area.
(25) Store size is limited to 5,000 square feet gross floor area.
(26) **Use** must demonstrate that it is compatible with **airport** operations.
(27) Limited to service stations.
(28) Limited to card lock fueling only. Retail services are limited to self-vending services.
(29) Permitted provided the **structure** is designed for easy conversion to industrial **use**, including not having fixed seating.
(30) Limited to 10,000 square feet maximum floor area.
(31) Allowed indoors only.
(32) Allowed indoors only. Outdoor **use** requires a **conditional use permit**.
(33) Must be aviation-related. See Chapter 15.332 NMC.
(34) Limited to expansion or change of existing heavy manufacturing uses.

(35) Shall not be located at the same address as a state-registered marijuana grow site, or within 1,000 feet of the real property comprising a public park, a public elementary or secondary school for which attendance is compulsory under ORS 339.020 or a private or parochial elementary or secondary school, teaching children as described in ORS 339.030 (1)(a). Distance is measured in a straight line in a radius extending for 1,000 feet or less in any direction from the closest point anywhere on the boundary line of the real property comprising an existing public park, public elementary or secondary school or a private or parochial elementary or secondary school to the closest point of the premises of a dispensary. The premises consist of the dispensary building, or the portion of the building used for a dispensary. Shall not be located within 1,000 feet of another medical marijuana dispensary. Operating hours are limited to the hours between 9:00 a.m. and 8:00 p.m.

(36) Allows up to 12 mature plants; indoor operations only.
(37) Indoor use only.

(38) The use is not allowed within 1,000 feet of the real property comprising a public park, a public elementary or secondary school for which attendance is compulsory under ORS 339.020 or a private or parochial elementary or secondary school, teaching children as described in ORS 339.030 (1)(a). Distance is measured in a straight line in a radius extending for 1,000 feet or less in any direction from the closest point anywhere on the boundary line of the real property comprising an existing public park, public elementary or secondary school or a private or parochial elementary or secondary school to the closest point of the premises of a recreational processor, wholesaler or retailer.
(39) No product on premises.
(40) Operating hours limited to the hours between 9:00 a.m. and 8:00 p.m.

1 Code reviser's note: Section 25 of Ordinance 2763 provides:

SECTION 25: Grace period for previously permitted or conditional uses. Where an **applicant** demonstrates that a particular **use** was a permitted or conditional **use** on a specific property immediately prior to adoption of this ordinance, but that the **use** is no longer either a permitted or conditional **use** on that property due to this ordinance, the **applicant** may establish the **use** as either a permitted or conditional **use**, as provided in the prior **code**, provided the **use** is legally commenced prior to January 1, 2018.

Exhibit A, Attachment 2

15.305.030 Zoning use table - Use Subdistricts.

600	MISCELLANEOUS USES	R-1/PD	R-1/0.1	R-1/0.4	R-1/6.6	R-1/SP	R-2/PD	R-2/SP	SD/LDR	SD/MMR	R-3/PD	RP/SP	RP/LU	AO	ARO	C-1/SP	C-2/LU	C-2/PD	C-2/SP	C-3/LU	SD/V	SD/NC	SD/H	CC	CF/RF	RF	IO	M-1/SP	SD/E	FHO	II	AIO	H	SC	BI
	Medical Marijuana Processor																											P	P						
	Medical Marijuana Grow Site	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C
	Recreational Marijuana Processor	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	P	X	X	X	X	X	X
	Recreational Marijuana Producer (Indoor)	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	P	P	X	P	X	X	X	X
	Recreational Marijuana Producer (Outdoor)	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	C	C	X	C	X	X	X	X
	Recreational Marijuana Retailer	X	X	X	X	X	X	X	X	X	X	X	X	X	X	P(2)/(3)	P(2)/(3)	P(2)/(3)	P(2)/(3)	P(2)/(3)	P(2)/(3)	P(2)/(3)	P(2)/(3)	X	X	X	X	X	X	X	X	X	X	X	X
	Recreational Marijuana Wholesaler	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	P(1)	X	P(1)	X	X	X	X	X	X	X	X	X	X	X	X	P(2)	P(2)	X	P(2)	X	X	X	X
	Recreational Marijuana Laboratories	X	X	X	X	X	X	X	X	X	X	X	X	X	X	P	P	P	P	P	P	P	P	P	X	X	X	P	P	X	P	P	X	X	X
	Recreational Marijuana Research Certificate	X	X	X	X	X	X	X	X	X	X	X	X	X	X	P	P	P	P	P	P	P	P	P	X	X	P	P	P	X	P	P	X	X	X

Key:

P: Permitted use

S: Special **use** – **Use** requires a special **use permit**

C: Conditional **use** – Requires a **conditional use permit**

X: Prohibited use

(#): See notes for limitations

(1) No product on premises.

(2) The use is not allowed within 1,000 feet of the real property comprising a public park, a public elementary or secondary school for which attendance is compulsory under ORS 339.020 or a private or parochial elementary or secondary school, teaching children as described in ORS 339.030 (1)(a). Distance is measured in a straight line in a radius extending for 1,000 feet or less in any direction from the closest point anywhere on the boundary line of the real property comprising an existing public park, public elementary or secondary school or a private or parochial elementary or secondary school to the closest point of the premises of a recreational retailer or wholesaler.

(3) Operating hours limited to the hours between 9:00 a.m. and 8:00 p.m.

Attachment 1

RESOLUTION NO. 2016-3253

A RESOLUTION INITIATING AN AMENDMENT TO THE NEWBERG MUNICIPAL CODE, TITLE 15 DEVELOPMENT CODE FOR PLACE, TIME AND MANNER REGULATIONS FOR RECREATIONAL MARIJUANA WHOLESALERS, LABORATORIES, RESEARCH CERTIFICATES AND RETAILERS

RECITALS:

1. The Oregon Legislature enacted four bills during the 2015 legislative session related to the Oregon Medical Marijuana Act and Measure 91. House Bill (HB) 3400 was the omnibus bill covering recreational marijuana and modifications to the medical marijuana program.

2. On September 8, 2015 the Newberg City Council was provided background information on medical and recreational marijuana at its Work Session. At its Business Session on September 8th the City Council established the Marijuana Subcommittee (Subcommittee) comprised of Councilors Rourke, Bacon and McKinney along with non-voting member Mayor Andrews.

3. The Subcommittee held its third meeting on January 12, 2016. A proposed timeline was included in their packet of material to address recreational marijuana place, time and manner for recreational wholesalers, laboratories, research certificates and retailers. The Oregon Liquor Control Commission has indicated they will start issuing licenses for retailers in the 3rd Quarter of 2016.

4. The Subcommittee subsequently passed a motion 3-0 directing staff to create a Request for Council Action to initiate the Development Code amendment process for Recreational Marijuana Wholesalers, Laboratories, Research Certificates and Retailers to bring forward for Council consideration on February 1, 2016.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

1. The City Council initiates an amendment to the Newberg Municipal Code, Title 15 Development Code for Place, Time and Manner Regulations for Recreational Marijuana Wholesalers, Laboratories, Research Certificates and Retailers. This starts the public process to study the proposed amendments.

2. By initiating this amendment, the council does not commit to taking any specific action on the proposal. It only wishes to give the amendment full consideration in a public hearing.

➢

EFFECTIVE DATE of this resolution is the day after the adoption date, which is: February 2, 2016

ADOPTED by the City Council of the City of Newberg, Oregon, this 1st day of February, 2016.

Sue Ryan

Sue Ryan, City Recorder

ATTEST by the Mayor this 4th day of February, 2016.

Bob Andrews

Bob Andrews, Mayor

Attachment 2

Doug Rux

From: Sue Ryan
Sent: Tuesday, January 19, 2016 11:33 AM
To: Doug Rux
Subject: FW: Recreational sales

Please advise
sue

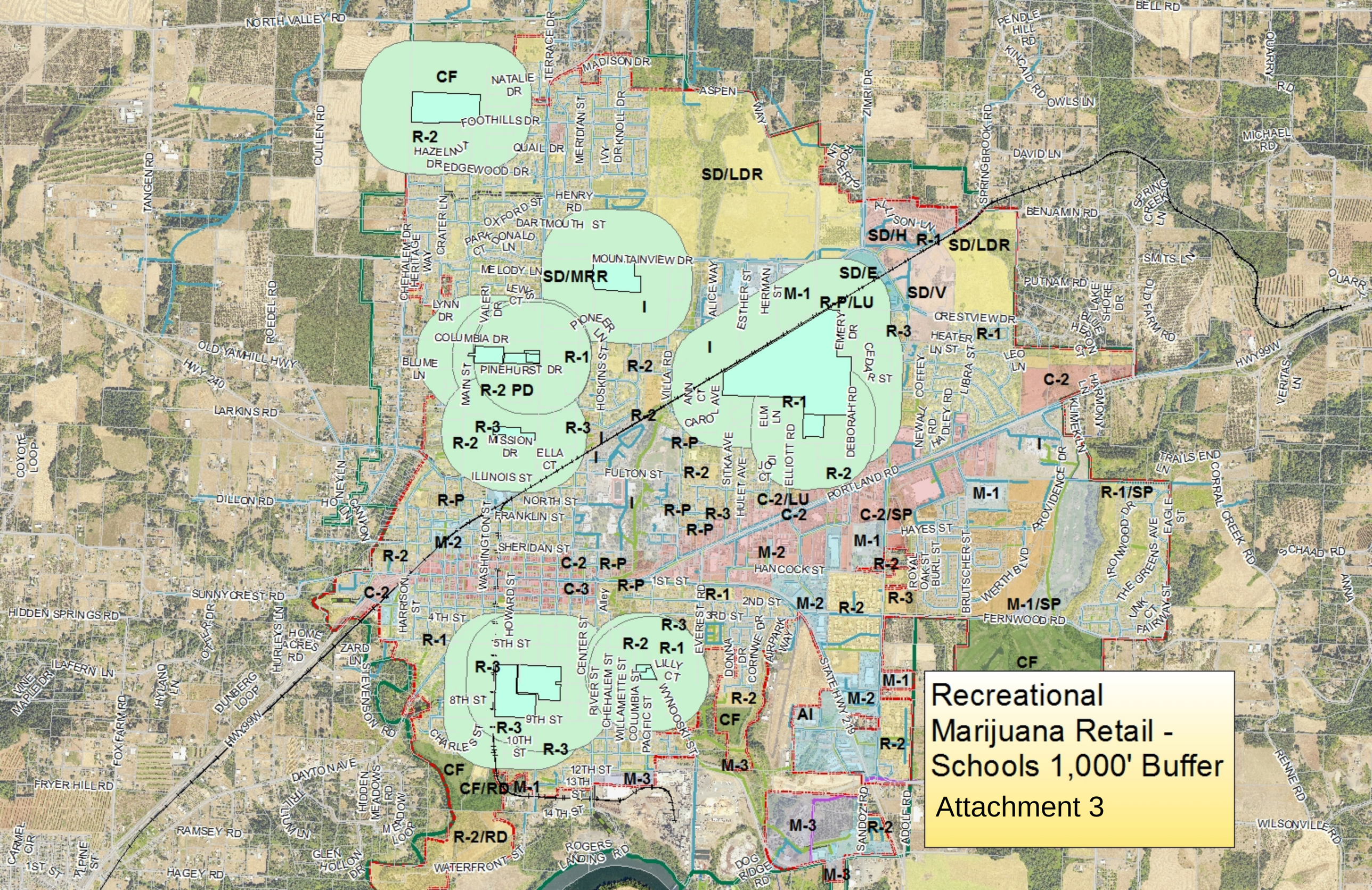
From: Steve Rhodes
Sent: Tuesday, January 19, 2016 11:29 AM
To: Sue Ryan
Subject: Re: Recreational sales

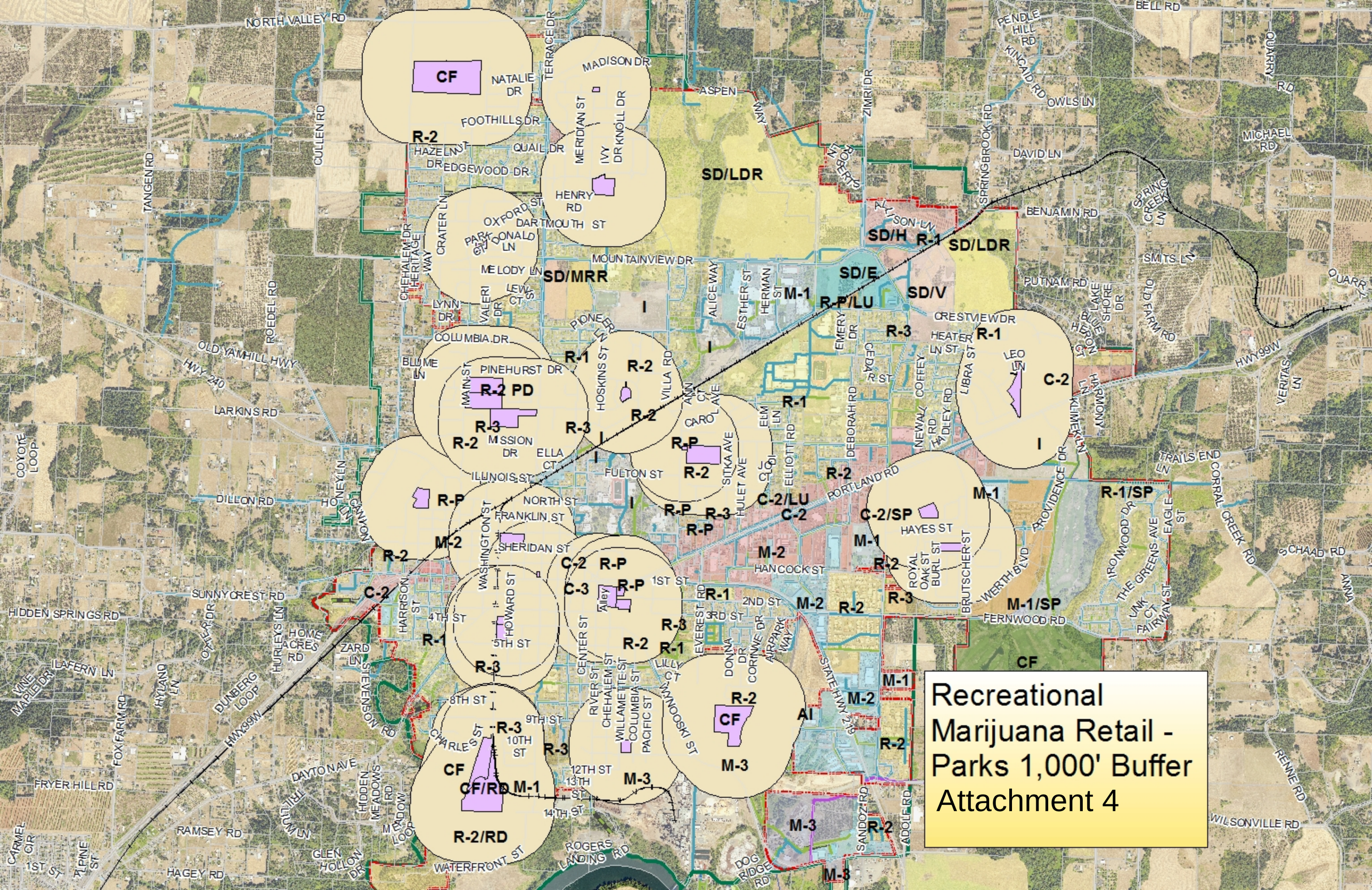
Check with Doug.

Sent from my iPad

On Jan 19, 2016, at 10:38 AM, Sue Ryan <Sue.Ryan@newbergoregon.gov> wrote:

> Do you want me to forward this to Council ?
> Sue
>
> Sue Ryan
> City Recorder
> City of Newberg
> cityrecorder@newbergoregon.gov
> (503) 537-1283
>
> OREGON PUBLIC RECORD
> Messages to and from this email address may be subject to the Oregon Public Records Law.
>
> **From:** Leif Patterson [mailto:leifer956@gmail.com]
> **Sent:** Monday, January 18, 2016 5:18 PM
> **To:** Sue Ryan
> **Subject:** Recreational sales
>
> Hello, as a Newberg resident I feel compelled to offer my two cents that we should allow recreational marijuana sales. Most of the neighboring towns are benefiting from this program and the tax revenue it generates. Currently, I drive into Portland a few times a week to purchase products there. I spend money on food, gas etc that would all be spent in Newberg if rec sales were allowed. Lets stop sending revenue elsewhere and start keeping it here for our schools, roads and other public services.
> Thanks for your time,
> Leif


Recreational
Marijuana Retail -
Schools 1,000' Buffer
Attachment 3
NORTH VALLEY RD
BELL RD
CF
R-2
NATALIE DR
FOOTHILLS DR
HAZELNUT DR
EDGEWOOD DR
QUAIL DR
MADISON DR
TERRACE DR
MERIDIAN ST
IVY DR
KNOLL DR
ASPEN
SD/LDR
HENRY RD
OXFORD ST
DARTMOUTH ST
PARK CT
DONALD LN
MELODY LN
MOUNTAINVIEW DR
SD/MR
R
I
CHEHALEM DR
HERITAGE WAY
CRATER LN
LYNN DR
VALERI DR
LEWIS CT
PIONEER LN
COLUMBIA DR
PINEHURST DR
BLUME LN
MAIN ST
R-1
R-2 PD
R-3
MISSION DR
ELLA CT
ILLINOIS ST
HOSKINS ST
VILLA RD
ALICE WAY
ESTHER ST
HERMAN ST
M-1
R-P/LU
SD/E
SD/V
SD/H
ALLISON LN
ZIMRI DR
PENDLE HILL RD
KINCAID RD
OWLS LN
SPRINGBROOK RD
DAVID LN
QUARRY RD
MICHAEL RD
BENJAMIN RD
SPRING CREEK LN
SMITS LN
PUTNAM RD
LAKE SHORE DR
OLD FARM RD
BLUE HERON CT
CRESTVIEW DR
HEATER LN
LEO LN
C-2
HARMONY LN
KIMBERLY LN
HWY99W
VERITAS LN
TRAILS END LN
CORRAL CREEK RD
CHAAD RD
ANNA
RENNE RD
WILSONVILLE RD
TANGEN RD
CULLEN RD
ROEDEL RD
OLD YAMHILL HWY
HWY 240
LARKINS RD
COYOTE LOOP
HONEYEN LN
DILLON RD
NORTH ST
FRANKLIN ST
WASHINGTON ST
SHERIDAN ST
HOWARD ST
HARRISON ST
SUNNYCREST RD
HIDDEN SPRINGS RD
HOME ACRES RD
HURLEYS LN
OTTER DR
ZARD LN
STEVENS RD
LAFERN LN
VINE MAPLE DR
HYLAND LN
DUNBERG LOOP
FOX FARM RD
FRYER HILL RD
DAYTON AVE
TRILLIUM LN
HIDDEN MEADOWS RD
MEADOW LOOP
RAMSEY RD
GLEN HOLLOW DR
HAGEY RD
CARMEL CIR
1ST ST
ALPINE ST
C-2
C-3
R-P
M-2
4TH ST
5TH ST
8TH ST
9TH ST
10TH ST
12TH ST
13TH ST
14TH ST
CHARLES ST
CENTER ST
RIVER ST
CHEHALEM ST
WILLAMETTE ST
COLUMBIA ST
PACIFIC ST
WINOOSKI ST
LILLY CT
EVEREST RD
DONNA DR
CORINNE DR
AIRPARK WAY
STATE HWY 219
CF/RD
M-3
R-2/RD
WATERFRONT ST
ROGERS LANDING RD
DOG RIDGE RD
SANDOZ RD
ADOLF RD
AI
FULTON ST
SITKA AVE
HULET AVE
CAROLAVE
ELM LN
ELLIOTT RD
DEBORAH RD
EMERY DR
CEDAR ST
NEWELL RD
COFFEY RD
HADLEY RD
LIBRA ST
PORTLAND RD
C-2/LU
C-2/SP
HAYES ST
HANCOCK ST
1ST ST
2ND ST
3RD ST
ROYAL OAK ST
BURL ST
BRUTSCHER ST
WERTH BLVD
FERNWOOD RD
M-1/SP
R-1/SP
PROVIDENCE DR
IRONWOOD DR
THE GREENS AVE
EAGLE ST
LINK CT
FAIRWAY ST


Recreational
Marijuana Retail -
Parks 1,000' Buffer
Attachment 4
CF
R-2
SD/LDR
SD/MRR
SD/H
R-1
SD/E
SD/V
R-P/LU
M-1
I
R-2 PD
R-3
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CF/RD
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NORTH VALLEY RD
TERRACE DR
MADISON DR
NATALIE DR
FOOTHILLS DR
QUAIL DR
EDGEWOOD DR
HENRY RD
OXFORD ST
DARTMOUTH ST
MOUNTAINVIEW DR
MELODY LN
COLUMBIA DR
PINEHURST DR
MISSION DR
ILLINOIS ST
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NORTH ST
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HANCOCK ST
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STATE HWY 219
FERNWOOD RD
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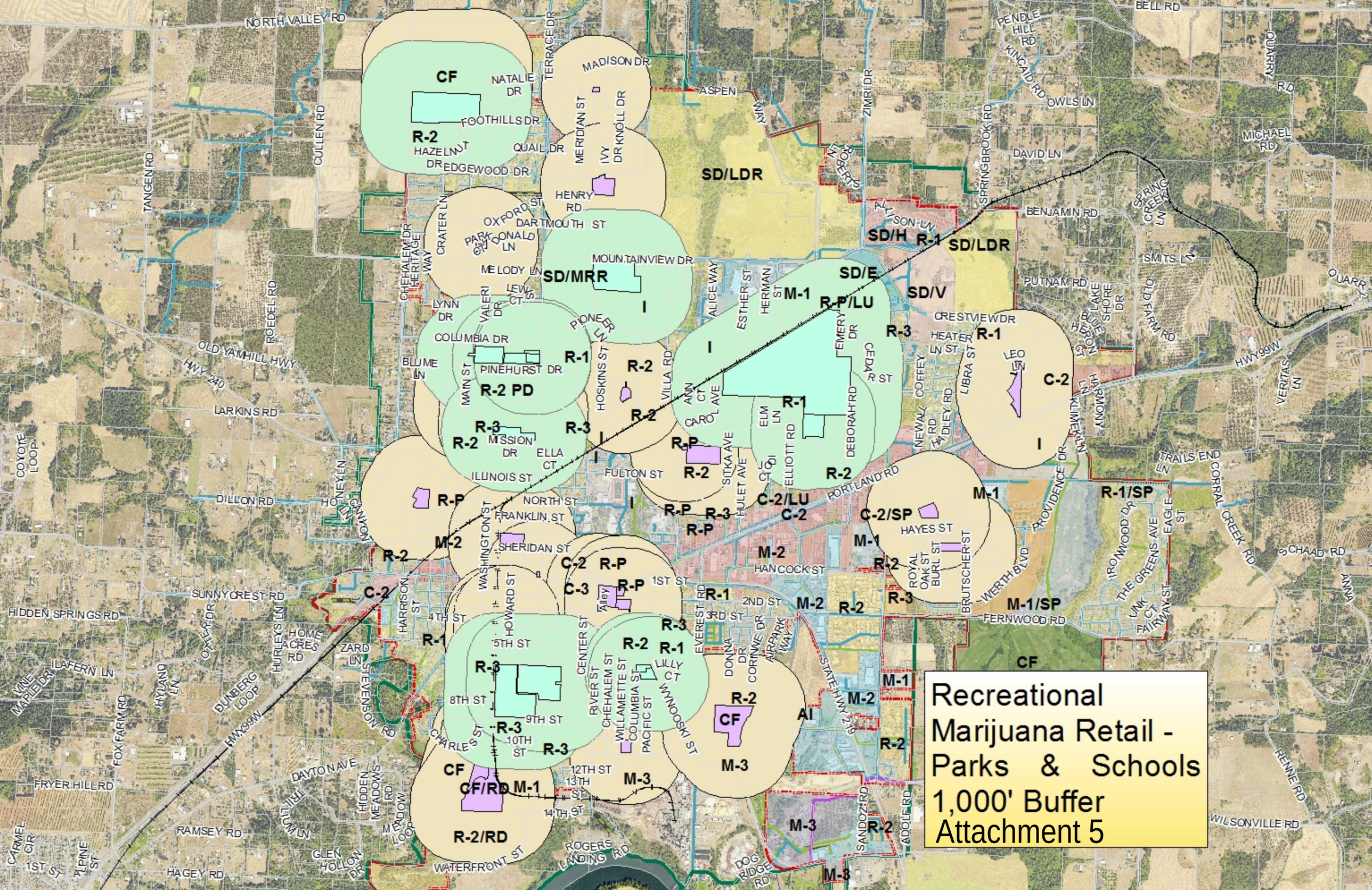
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Marijuana Retail -
Parks & Schools
1,000' Buffer
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